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Spousals and Scandal in Measure for Measure

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SPOUSALS AND SCANDAL

IN

MEASURE FOR MEASURE

by

George A. Lane, S.J.

A Thesis Submitted to the Faculty of the Graduate School
of Loyola University in Partial Fulfillment of
the Requirements for the Degree of
Master of Arts

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LIFE

George A. Lane, S.J., was born in Evanston, Illinois, July 29, 1934.

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CHAPTER I

INTRODUCTION

Of all the plays of William Shakespeare probably none has received such varied and even contradictory criticism as his Measure for Measure. Since it was first produced in 1604, this play has been both lauded as an heroic expression of Christian morality and damned as revolting and diabolic.

For example, in 1849 Samuel Taylor Coleridge, much disturbed by Measure for Measure, wrote that "This play which is Shakespeare's throughout, is to me the most painful, say rather, the only painful part of his genuine works. The comic and tragic parts equally border on the $\mu\epsilon\tau\epsilon\tau\epsilon\tau\epsilon\tau\epsilon$, — the one being disgusting, the other horrible."¹

Sir Arthur Quiller-Couch was so scandalized by the play that in 1922 he asked, "How can you call (under any ordinary definition) Measure for Measure a Comedy, running as it does all alongside the pit of Hell and only redeemed to health by a posturer and a dirty trick contrived under a sense of chastity utterly false and warped to us."² To rectify this bad situation which he did not want to attribute to Shakespeare, when Sir Arthur edited a text of the play with

¹ Samuel Taylor Coleridge, Notes and Lectures upon Shakespeare (London, 1849) I, 125.

² Arthur Quiller-Couch, Shakespeare's Comedies (Cambridge, 1929), p. 100.

John Dover Wilson, he built up an argument for composite authorship according to which someone else re-wrote the play and made a number of insertions after Shakespeare had finished with it.³

A French critic of Measure for Measure writing in 1924 does not have the play merely skirting "the pit of Hell"; he goes further yet and says that it is "full of the mystery of Satan, . . . the most pessimistic of all Shakespeare's plays."⁴

Still other critics trace the trouble they find with the play back to the author's "tragic period." Sir Edmund K. Chambers writes:

They are all unpleasant plays [Measure for Measure, All's Well That Ends Well, Troilus and Cressida], the utterances of a puzzled and disturbed spirit, full of questionings, skeptical of its own ideals, looking with new misgiving into the ambiguous shadows of a world over which a cloud has passed and made a goblin of the sun.⁵

A little later in the same book Chambers says:

It is perhaps characteristic of the state of mind out of which Measure for Measure came, that it is not only a painful, but also an extremely difficult play. . . . And it may be doubted whether Shakespeare wrote it with any very clear scheme before him.⁶

Of all the adverse criticism of Measure for Measure, the comment of Una M. Ellis-Fermor is probably the most damning.

³ Arthur Quiller-Couch and John Dover Wilson, eds., The New Shakespeare, Measure for Measure (Cambridge, 1922), Introduction.

⁴ Guy de Pourtales, De Hamlet A Swann (Paris, 1924), pp. 42-46: "Certes, cette piece n'est pas chretienne. Elle est pleine du mystere de Satan Du theatre de Shakespeare dans son ensemble, c'est la piece la plus pessimiste."

⁵ Edmund K. Chambers, Shakespeare: A Survey (New York, 1926), p. 210.

⁶ Ibid., 211.

In Measure for Measure the lowest depths of Jacobean negation are touched. Cynicism has taken on a kind of diabolic vigilance; with the exception of the kindly, timid Provost, there is no character who is not suspect, and those whose claims to goodness or decency seem most vigorous are precisely those in whom meanness, self-regard and hypocrisy root deepest.⁷

But the criticism of the play is not all adverse. On the positive side we find critics asserting that Measure for Measure is not only not diabolic, but that it is in fact profoundly Christian. Henry S. Bowden argues for this position in a book of his published in 1899.⁸ Emily Hickey also held this view in an article she wrote in 1917.⁹

In The Wheel of Fire G. Wilson Knight includes a long chapter title "Measure for Measure and the Gospels" in which he sets forth a persuasive argument for the fundamentally Christian character of the play. What appeared to be difficulties and scandals to so many critics Knight explains as reflections of divine paradoxes:

Much has been said about the difficulties of Measure for Measure. But, in truth, no play of Shakespeare's shows more thoughtful care, If ever the thought at first sight seems strange, or the action unreasonable, it will be found to reflect the sublime strangeness and unreason of Jesus' teaching.¹⁰

Now this solution may have been a step in the right direction in 1930, but it was altogether too simple to be at all explanatory.

In 1937 Professor R. W. Chambers gave the Annual Shakespeare Lecture of the

⁷Una M. Ellis-Fermor, The Jacobean Drama (London, 1936), p. 260.

⁸Henry S. Bowden, The Religion of Shakespeare (London, 1899).

⁹Emily Hickey, "Measure for Measure -- a Study," Catholic World, CV, (April, 1917), 90-104.

¹⁰G. Wilson Knight, The Wheel of Fire (London, 1930), p. 96.

British Academy. His paper titled "The Jacobean Shakespeare and Measure for Measure" has come to be recognized as one of the few first-rate, accurate interpretations of the play. With his careful, objective scholarship Chambers shows that repentance, intercession, and forgiveness constitute the central theme of Measure for Measure and the core doctrines of Christianity.¹¹ The title of the play is from Sacred Scripture, the theme develops to the resolution of Christian justice and mercy. "Grace and skill have transformed Promos and Cassandra [the source play by George Whetstone] into a noble drama on the theme 'Judge not: for with what measure ye mete it shall be measured to you again.'"¹²

"Only Professor R. W. Chambers," wrote Isabel MacDonald, "really understands this most Catholic heroine [Isabella] of Shakespeare's most Catholic play."¹³

Virgil K. Whitaker also remarks that "Measure for Measure is therefore important because it is, with Macbeth, the most specifically Christian of Shakespeare's plays."¹⁴

This sort of interpretation taken together with the negative remarks cited above is the sort of contradiction which led Sir Arthur Quiller-Couch to ask "What is wrong with this play? Evidently something is wrong, since the critics

¹¹R. W. Chambers, "Man's Unconquerable Mind" (London, 1939), pp. 277-310.

¹²Ibid., p. 310.

¹³Isabel MacDonald, "Shakespeare's Isabel," Tablet, CVC (May, 1950), p. 380.

¹⁴Virgil K. Whitaker, Shakespeare's Use of Learning (San Marino, California, 1953), p. 215.

so tangle themselves in apologies and interpretations."¹⁵ Yes, evidently something is wrong somewhere. Professor Parrott offers another possibility: "It might be suggested that something is wrong with the critics."¹⁶ As I hope to demonstrate in this thesis, Professor Parrott is right; the trouble is not so much with the play as with those critics who failed to gather enough external evidence to understand the play properly. Most of the criticism of Measure for Measure before 1931 was subjective and based on internal evidence alone. Only since then have some scholars investigated the external evidence of Elizabethan laws and customs and thereby come to a more accurate interpretation of the play.

Most of the false interpretation of this play comes from a misunderstanding of the marital relations in the play. If these are misunderstood, the critic can not help but be scandalized. The play contains a number of Elizabethan spousals and marriage relations but it does not satisfactorily explain to the modern audience or critic what the marriage laws and customs were in England in 1604. They were not what our modern laws and customs are today. So in order to understand Measure for Measure as Shakespeare's audience understood it and as Shakespeare intended it to be understood, we must discover what these marriage laws and customs were. That will be the purpose of this thesis.

After indicating the main problems of the play as clearly as possible, we will trace the origin, development, and status in 1604 of England's marriage law, and then show how that law and its observance are verified and exemplified

¹⁵Quiller-Couch and Wilson, eds., The New Shakespeare, Measure for Measure, p. xiii.

¹⁶Thomas Marc Parrott, Shakespearean Comedy (New York, 1949), p. 356.

in Measure for Measure, and how the play when seen in the light of these laws and customs is found to be morally acceptable and dramatically intelligible.

To give the setting for the problems we wish to investigate, the story of Measure for Measure is briefly this: Duke Vincentio of Vienna realizes that his city has fallen into a very bad state of moral corruption. He wants to reform things but does not feel he can do it himself because it was by his own negligence that the laws fell into disuse. He therefore deputizes the "righteous" Angelo to enforce the neglected laws. Vincentio then leaves the city. The young gentleman Claudio, secretly betrothed to the pregnant Juliet, is soon arrested, thrown into jail, and quickly condemned to death for fornication. He contacts his sister Isabella, a postulant of the Order of St. Clare, who goes to Angelo and pleads for her brother's life. Angelo agrees to grant her request if she will submit her chastity to his lust. Isabella flatly refuses this base proposition and soon afterwards meets the Duke now returned in the guise of a friar. Vincentio or Friar Lodowick advises Isabella to agree to Angelo's proposal and he will arrange to have Mariana, Angelo's betrothed, go in her place to the midnight rendezvous. This substitution is the Duke's solution to Isabella's dilemma. It is calculated to save her chastity and Claudio's life. Isabella agrees to the substitution, the Duke arranges it, and Mariana goes through with it. Angelo is deceived but he later goes back on his promise, ordering Claudio beheaded with dispatch. Ragozine, who looks like Claudio, just died in prison; so the Duke, who controls all the action, has his head sent to Angelo as requested. The Duke soon returns to the city as Duke; Angelo is exposed and condemned to death just as quickly as he condemned Claudio, measure for measure. But when Claudio is produced alive, the Duke forgives Claudio, forgives Angelo

too, and both are sent away free with their lovers.

Now as the criticism indicates and this sketch reveals, the involved plot of Measure for Measure presents many problems, but the chief problem by far centers around the substitution of Mariana for Isabella in Angelo's bed. W. W. Lawrence testifies to this.

Nothing in the play has aroused sharper dissent than the device by which the honor of Isabella is safeguarded, and nothing has been more completely misunderstood. The Duke has been blamed for suggesting it, Isabella for consenting to it, and Mariana for carrying it out. Most readers feel it to be in no wise consonant with the refinement of the sweet swan of Avon.¹⁷

And yet it is clear from a study of source plots that the substitution or "bed-trick" device was Shakespeare's original contribution to the plot and his means of solving Isabella's dilemma. Sir Walter Raleigh points out that:

In the Italian original of the story Isabella, to save the life of her brother, yields to the wicked deputy, who thereupon breaks his promise, and causes Claudio to be executed in the prison. George Whetstone, who handled the story before Shakespeare, mitigated one of these atrocities; in his version the gaoler is persuaded to substitute the head of a newly executed criminal for the head of Claudio.¹⁸

But Shakespeare, we see, by this substitution device saves Isabella's honor, preserves her as a heroine of chastity, and also saves Claudio's life. Many critics, nevertheless, complain that this substitution is no solution at all since it could neither be dramatically nor morally acceptable to the audience.

Professor R. W. Chambers throws an initial light on the problem by explaining how the substitution story was dramatically acceptable to Shakespeare's audience:

¹⁷W. W. Lawrence, Shakespeare's Problem Comedies (New York, 1931), p. 94.

¹⁸Walter Raleigh, Shakespeare (London, 1909), p. 148.

In the sixteenth century the story was a commonplace of romance, and Shakespeare used it in order to make more gentle one of the quite horrible situations of the pre-Shakespearean drama. There was a time when Shakespeare had not shrunk from staging the grossest horrors. It is to avoid them, that he now introduces the substitution which offends the 'modern conscience.'¹⁹

But the substitution which obviously offends the modern conscience could have been morally acceptable to Shakespeare's audience only if the laws governing marriage in 1604 were considerably different from what they are in our day. They were and that was precisely the cause of much of the critics' scandal.

Where the critics say that Shakespeare's solution is revolting because Mariana is no more married to Angelo than Isabella, and the union is fornication either way, they overlook the fact that Mariana was betrothed to Angelo and Isabella was not. As W. W. Lawrence insists, this is a very significant bit of information. We must discover, then, what it was about a betrothal in Shakespeare's day that made it more justifiable for Mariana to meet Angelo than Isabella.

Another question closely related to this is how the Duke and Isabella could consistently encourage the union between Angelo and Mariana as sinless when they had deplored this very deed as sinful for Claudio and Juliet. Both of these questions can be clarified and to a great extent solved by a knowledge of the marriage laws and customs prevalent in England in 1604.

The procedure we will follow in order to work toward a solution of these problems will be first to focus the substitution problem and show the difficulties that have been encountered with it by a short review of the criticism con-

¹⁹R. W. Chambers, p. 279.

cerning it. This will be done in Chapter Two. Then in the following chapter we will make a study of the origins, development and status of the marriage laws that were pending in the Elizabethan England. In Chapter Four we shall show how these laws are exemplified in Measure for Measure and how Shakespeare makes use of them for the solution of Isabella's dilemma.

CHAPTER II

CRITICAL SURVEY OF THE SUBSTITUTION PROBLEM

The varied general criticism of Measure for Measure was cited in Chapter One to indicate that there are problems in the play. Professor Lawrence pointed out that "[n]othing in the play has aroused sharper dissent than the device by which the honor of Isabella is safeguarded, and nothing has been more completely misunderstood."¹ Before explaining the marriage laws and customs that were the chief cause of this misunderstanding, it will be helpful to focus the problem by a brief review of the specific criticism on this substitution device. We shall see then that if this problem can be focused and cleared up, the largest obstacle to a correct understanding of Measure for Measure will have been removed.

The scandal for the most part centers on Isabella, first of all because she refuses to sacrifice her honor to save her brother's life, and then, in order to save her own honor, she seems all too willing to sacrifice that of Mariana. What sort of a heroine is this? Though she may be much concerned about her own chastity, surely she has no concept of charity at all. The first judgment here reveals an ignorance of Christian morality. The second follows from a lack of acquaintance with the betrothal and marriage laws in the time of Shakespeare. Sir Arthur Quiller-Couch was scandalized by Isabella on both

¹Lawrence, p. 94.

counts:

Still it has to be admitted that she is something rancid [sic] in her chastity; and, on top of this, not by any means such a saint as she looks. To put it nakedly, she is all for saving her own soul, and she saves it by turning, of a sudden, into a bare procuress . . . To Isabella the supposed Friar (the disguised Duke) would be a holy man: and we are all acquainted with the sort of woman who will commit herself to any deed without question, if it be suggested by a priest. It remains a fact that on the supposed Friar's suggestion, and with no qualms of conscience, but with careful contrivance, Isabella substitutes Mariana for herself in Angelo's bed. Her panegyrists may excuse it: they cannot overlook it: and to us, in our day, it looks as a trick which denudes her own chastity of all but chastity's conventional (or conventual) religious trappings; that she is chaste, even fiercely chaste, for herself, without quite knowing what chastity means.²

"An exemplar of chastity," Sir Arthur adds, "should at all events be consistent -- or at least consistent in chastity, that most definite of virtues. But in fact one never knows where to take this paragon."³

J. S. P. Tatlock refused to make any such judgments as the above about Isabella, but seeing her condemn Claudio's deed as a sin and then encourage Mariana to apparently the same thing, he could not help wondering. "Isabella," he says, "herself 'a thing enskied and sainted,' lends her countenance to a dubious intrigue."⁴ This is just what she does; but, as will be seen, the dubious intrigue can be fairly well explained and somewhat justified.

Emily Hickey, one of Isabella's panegyrists, writing at the same time as Tatlock, was also puzzled by the inconsistency of the condemnation of Claudio and Juliet and the approbation of Angelo and Mariana in what appeared to be the

²Quiller-Couch and Wilson, p. xxx.

³*Ibid.*, p. xxxi.

⁴J. S. P. Tatlock, "The Chief Problem in Shakespeare," *Sewanee Review*, XXIV (April, 1916), p. 14.

very same sort of union:

But why, may we ask, was Juliet considered so deeply to blame; Juliet, of whom her lover, condemned to death, said,

She is fast my wife,

Save that we do the denunciation lack

Of outward order.

"Upon a true contract," he had induced her to act as though their union had been sanctioned by the Church. While to Mariana, the Duke denies the possibility of there being any sin in the bringing of her and Angelo together.⁵

In this passage Emily Hickey has focused upon the two-fold central problem of the play which we mentioned at the end of the last chapter. In face of this apparent inconsistency, however, she does not condemn Isabella as a "bare procuress"; this is hardly the impression Shakespeare wanted us to have of his heroine. Miss Hickey rather suspected that the betrothal was the key to the difficulty, and though she did not understand how it worked, she must be credited with putting the difficulty where it belongs, not in Isabella's character, but in the marriage customs of the day. With somewhat too strong Catholic polemics Miss Hickey puts her question this way:

Have we here a distinction made between 'a true contract' and a betrothal, and can it have been that, in the building in Elizabethan days of 'the City of Confusion' it may have been possible for our poet to suppose that a formal betrothal would sanction the relation which, as all Catholics know, is only sanctioned and blessed in the sanction and blessing of the Church?⁶

As will be seen, Emily Hickey's questioning proposal proves to be very near to the truth of the situation.

Ernest E. Rollett, writing a few years later in 1923, decided that there

⁵Hickey, p. 96.

⁶Ibid.

was simply no solution at all to this scandalous substitution problem. The whole thing was incredible.

The method by which Angelo is outwitted is precisely the same as that employed by Helena to capture Bertram; only, to use the American phrase, "more so." That Mariana should consent to such a plot, that Isabella should urge it, that the Duke should sanction it, are three incredibles knotted together into one absolute impossibility.⁷

John Middleton Murry's analysis and appraisal of the situation is still worse than this. What appears to be an ignorance of traditional Christian morality in his interpretation leads him to misunderstand Measure for Measure just about as completely as Quiller-Couch did.

The treatment of love in it [Measure for Measure] is as near to pure cynicism as Shakespeare could get. Claudio, who really loves, and is loved by Julietta, is sentenced to death for anticipating the marriage he intends. Isabel, who will not sacrifice her icy chastity to save her brother, ends by acting like a woman of the town, but utterly devoid of the humanity which glows in Doll Tearsheet or Bianca.⁸

G. Wilson Knight argues that Isabella consented to the substitution even though she knew it would be sinful for Mariana and that Shakespeare intended by this to reveal a fault of selfishness in her character which she would overcome later on in the play. "It is significant that she readily involves Mariana in illicit love; it is always her own, and only her own, chastity that assumes, in her heart, universal importance."⁹

The comment of Sir E. K. Chambers in 1926 shows that the morality of the substitution device was still a problem for Shakespeare criticism at that time.

⁷ Edward Ernest Kellatt, Suggestions (Cambridge, Eng., 1923), p. 103.

⁸ John Middleton Murry, "Shakespeare and Love," The World's Classics, CCLXXX, 405.

⁹ G. Wilson Knight, p. 93.

"I am quite sure," he writes, "that the actual issue which is found in the pretended submission of Isabella and the device of the substituted Mariana, commonplace of romance as the latter may be, does not commend itself to the modern conscience."¹⁰ This is perfectly true. But the next question, how the substitution could have commended itself to the Elizabethan conscience, is the more important question and had not yet been investigated in 1926. Before the substitution could be understood, someone would have to investigate the marriage and betrothal customs in Elizabethan England.

It is worthwhile to note here that virtually every critic of Measure for Measure from Coleridge to E. K. Chambers based his interpretation of the play on internal evidence alone and on the marriage laws and customs prevalent in his own day. "This is indeed the everlasting difficulty of Shakespeare criticism," says Walter Raleigh, "that the critics are so much more moral than Shakespeare himself, and so much less experienced."¹¹

The first effort to find out how Shakespeare's audience understood and judged the substitution device was made by Professor W. W. Lawrence in 1931. He pointed out correctly that the betrothal between Angelo and Mariana is of primary importance. One has to understand the betrothal to understand the play. But because he did not pursue his investigations of the laws far enough, his conclusions are not correct. Here is Lawrence's solution to the chief difficulty in the play:

¹⁰ E. K. Chambers, Shakespeare: A Survey, p. 215.

¹¹ Raleigh, pp. 164-65.

[I]n Measure for Measure a jilted girl lies with her former betrothed, in order that the chastity of a woman whose honor he is seeking to corrupt may be preserved. But Mariana and her adviser are in no wise culpable, nor is Isabella herself. The point of importance to keep in mind is the relation between Angelo and Mariana. The fact that they had earlier been affianced is of the utmost importance in drawing conclusions as to the morality of the story. . . . [T]he essential feature in the plot of Measure for Measure is that Mariana was fully justified in yielding to the embraces of Angelo, on account of her earlier betrothal to him. . . . Such a betrothal as Mariana's was held in Elizabethan days to have much the binding force of the complete marriage ceremony, and to confer marital rights.¹²

Whether anyone is "culpable," whether Mariana is "fully justified" in yielding to Angelo, and whether a betrothal "confers marital rights" are conclusions which Lawrence did not substantiate. At this point we may consider them in need of further investigation, for Lawrence did not document either his statement or his conclusions.

Following this positive contribution and G. Wilson Knight's explanation of Measure for Measure as fundamentally Christian in 1931, it is hard to see how Una Ellis-Fermor came away from the play with an "impression of a world-order ineradically corrupted and given over to evil."¹³ She says that the chief cause of this impression is the character of Isabella whose actions "call in question the sanctity of religion, sex, marriage and even 'the holiness of the heart's affections'."¹⁴ Isabella "agrees contentedly to Mariana taking her place with Angelo, arranges the deception, gets the keys of admission from him, breaks the plan to Mariana and gives her a few last words of business-like admonish-

¹² Lawrence, p. 95.

¹³ Ellis-Fermor, p. 262.

¹⁴ Ibid.

ment."¹⁵

Before the comprehensiveness of this exposure, the imagination staggers, all the cynicism in individual speeches is as nothing beside the cynicism implicit in this orientation of the material; it is a world in whose fetid air no wholesome thing can grow. It is, in Shakespeare's thought, the very nadir of disgust and cynicism, a world where 'nothing is but what is not,' where such order as there is is evil, where all passion and all enterprise is only 'the expense of spirit in a waste of shame.'¹⁶

This is the very zenith of misunderstanding. It is much more a judgment of the critic than of Shakespeare, for it reveals an ignorance both of external evidence needed to judge the play and basic Christian morality. This sort of criticism verifies Professor R. W. Chambers remark that "Piers Plowman and Measure for Measure are the two things most widely misunderstood in English Literature with one exception."¹⁷

In 1937 Measure for Measure interpretation was advanced farther in the right direction than it had ever been before by the Shakespeare Lecture of the British Academy given that year by R. W. Chambers. His explanation of the play is clear and favorable. He discredits all the scandalized and "tragic period" criticism of the play and effectively demonstrates that Measure for Measure is a thoroughly Christian play centering around the characteristically Christian virtues of chastity and forgiveness. With an awareness of the importance of external evidence, this is how Chambers treats the substitution of Mariana for Isabella:

¹⁵Ibid., p. 263.

¹⁶Ibid.

¹⁷R. W. Chambers, p. 278.

Mariana has been contracted to Angelo formally by oath. It is vital to remember that, according to Elizabethan ideas, Angelo and Mariana are therefore man and wife. But Angelo has deserted Mariana. Now I grant that, according to our modern ideas, it is undignified for the deserted Mariana still to desire union with the husband who has scorned her. We may resent the elegiac and spaniel-like fidelity of Mariana of the Meat-ed Grange. But is that the attitude of the year 1604? The tale of the deserted bride seeking her husband in disguise is old, approved, beloved. . . . She, in all shadow and silence, visits her husband in place of Isabel, to save Claudio's life.

And our twentieth century critics are scandalized over the tale. .¹⁸

Regrettably, Professor Chambers did not carry what historical investigations he did make far enough; for, as will be seen, Angelo and Mariana were called man and wife, but could not lawfully live as man and wife. And so the problem remains.

The next major contribution to Measure for Measure criticism was a long scholarly article published by Professor Roy. W. Battenhouse in 1946. This article, entitled "Measure for Measure and the Christian Doctrine of the Atonement,"¹⁹ argues that the whole play is a symbolic allegory of the mystery of man's redemption. Unfortunately for our purposes Professor Battenhouse did not directly confront the substitution problem in his article.

In 1949, however, the most thorough and direct explanation of the substitution problem appeared in Professor Davis P. Harding's article "Elizabethan Betrothals and Measure for Measure."²⁰ Harding first shows how W. W. Lawrence's explanation of the substitution problem was inadequate because he failed to see

¹⁸ Ibid.

¹⁹ Roy W. Battenhouse, "Measure for Measure and the Christian Doctrine of the Atonement," PMLA, LXI (1946), pp. 1029-59.

²⁰ Davis P. Harding, "Elizabethan Betrothals and Measure for Measure," JEGP, XLIX (1950), pp. 139-58.

that, although the spousal contract between Angelo and Mariana was valid, their consummation of it before solemnization in Church was illicit and sinful. The Professor then proceeds to set forth the first thorough explanation of Elizabethan betrothal and marriage laws, which are the only key to a correct understanding of the substitution and the play. He shows how an acquaintance with these laws explicates the problems and elucidates the action of the play. Professor Harding substantiates every step of his argument with references to Elizabethan writers and authoritative legal historians.

What then remains to be done? As indicated above, the problem I wish to work on is two-fold -- one aspect concerns the substitution and the laws and customs that would make it acceptable; another aspect concerns the consistency of the Duke's and Isabella's judgments on the two unions between Claudio and Juliet and Angelo and Mariana.

As to the first aspect of the problem, I propose to follow Professor Harding's lead, but to give a more detailed and extended documentation of the law and customs upon which Measure for Measure is based. This will extend Professor Harding's work chiefly by giving full citations for the twelfth century origins and seventeenth century status of the spousal and marriage law which was operative in Shakespeare's England.

As to the second aspect, Professor Harding says at the end of his article, "I have not tried to justify on any absolute grounds the inconsistency in the behavior of the Duke and Isabella. I have merely sought to account for its presence by showing the source from which it came."²¹ Now it is my contention, as

²¹ Ibid., p. 158.

I hope to demonstrate in Chapter Four, that there is no inconsistency in the behavior of the Duke and Isabella. But this will only follow upon a clear understanding of the marriage laws and customs of the time.

CHAPTER III
THE LAWS OF SPOUSALS
AND MARRIAGE

We must investigate the laws of spousals and marriage prevalent in Elizabethan England because it was by these laws that Shakespeare's audience judged the substitution device and the unions between Angelo and Mariana, Claudio and Juliet. We must also base our judgments upon these same laws and not upon our own in order to avoid the misunderstanding cited in the previous chapter.

In the present chapter the following questions must be answered: 1) What general body of law regulated marriage rites and customs in Elizabethan England? 2) Within this body of law, when and how did the marriage statutes originate? 3) What specific statutes governed the relations found in Measure for Measure? and 4) How were these statutes understood and observed in England in 1604?

At first glance there are three possibilities as to what general body of law governed marriage and determined the conditions for its validity in Elizabethan England. It could have been the English civil law as legislated by the Queen and Parliament. It could have been the ecclesiastical law of the Church of England established by Henry VIII. Or, it could have been the old Roman canon law of the Catholic Church.

In order to settle this question and many succeeding ones authoritatively, appeal will be made either to legal statutes, or to the writings of lawyers, or to the writings of eminent legal historians. Among these last mentioned his-

torians the most widely recognized are Pollock and Maitland¹ and William Holdsworth² for the history of English law, Adhémar Esmein³ for the canon law on marriage, and George Hayward Joyce, S.J.,⁴ for the nature and development of Christian marriage. Other important authors will be cited too, but these are the foremost legal historians on this matter.

Was it the English civil law, then, which regulated marriage in Elizabethan England? In their History of English Law Pollock and Maitland clearly state: "As to our temporal law, from the middle of the twelfth century onwards it had no doctrine of marriage, for it never had to say in so many words whether a valid marriage had been contracted. Adultery was not, bigamy was not, incest was not a temporal crime."⁵

William Holdsworth confirms this point. "The temporal courts had no doctrine of marriage."⁶ "The ecclesiastical courts had, certainly from the twelfth century, undisputed jurisdiction in matrimonial causes."⁷

If the law of marriage was not to be found in the corpus of English civil law, it must be sought in the ecclesiastical law. For help in this matter

¹Sir Frederick Pollock and Frederic W. Maitland, The History of English Law before the time of Edward I., (Cambridge, England, 1895).

²William S. Holdsworth, A History of English Law, 7th ed., (London, 1956).

³Adhémar Esmein, Le Mariage en Droit Canonique, 2nd ed., (Paris, 1935).

⁴George Hayward Joyce, S.J., Christian Marriage (New York, 1933).

⁵Pollock and Maitland, II, 372.

⁶William Holdsworth, I, 622.

⁷Ibid., 621.

Frederic Maitland refers us to an eminent English canon lawyer of the fifteenth century:

[William Lyndwood] has told us where to look for the law of marriage.

At the opening of his fourth book he writes thus: —

Here we much discuss what is marriage, whence it derives its name, how it is contracted, where it was instituted, what are the causes of its institution, what good flows from it, and what impediments there are to it. Of all these matters Innocentius has treated, and yet more fully Johannes Andreas.³ (Wm. Lyndwood: Provinciale (1430), p. 271, gl. ad v. Matrimonium.)

In other words, there is no English law of Marriage. If you want to know whether you are old enough to marry, whether you may marry your late wife's second cousin or your godmother's daughter, whether a religious ceremony is essential to a marriage, whether you have good cause for a divorce, you will find your answer in the jus commune of the church, and, in order to start you upon your investigations, I refer you to the works of two Italian canonists of high repute, one of whom was a layman, the other a pope.⁸

For centuries, then, the marriage law of the universal church, the Roman canon law, was the marriage law of England.

In The Marriage Law of England James T. Hammick attests that this was the case and indicates the origins of the law and how it was received in England.

The ancient canon law, or law of the Church, engrafted upon the rules of the [Roman] civil law, is the basis of the law of marriage generally throughout Europe. . . . It was natural, therefore, under the religious system which prevailed in Europe during the middle ages, that the regulation of matrimony should fall under ecclesiastical jurisdiction. Hence the canon law furnished the rules with respect both to the celebration and legal constitution of marriage; it was received and adopted in this country [England] except for one great purpose, that of legitimating children by the effect of a subsequent marriage.⁹

It was in the eleventh century in England, shortly after the Norman con-

⁸ Frederic Maitland, Roman Canon Law in the Church of England (London, 1898), pp. 39-40.

⁹ James T. Hammick, The Marriage Law of England, 2nd ed., (London, 1887), p. 3.

quest, that the jurisdiction of the courts spiritual and temporal was divided. "By the middle of the twelfth century," write Pollock and Maitland, "by the time when Gratian was compiling his concordance of discordant canons, it was law in England that marriage appertained to the spiritual forum."¹⁰ They continue:

Soon after this Glanvill acknowledged that the ecclesiastical court had cognizance of the question whether or not there had been a marriage, and the king's court, with a profession of its own inability to deal with that question, was habitually asking the bishops to decide whether or no a litigant was legitimate.⁵ (Glanvill, vii. 13, 14; Select Civil Pleas (Selden Soc.), pl. 15, 92, 109.) Thenceforth the marriage law of England was the canon law.¹¹

So the canon law of the Church governed marriage in England from the twelfth century on. It might be expected, however, that the reformation of Henry VIII altered these laws before the time of Measure for Measure. It will be shown subsequently that the Reformation left the marriage laws substantially unchanged.

ORIGINS AND TRANSMISSION

The marriage statutes of canon law with which Shakespeare's contemporaries were acquainted originated in the twelfth century. They came as the resolution of a dispute between the great law schools of Paris and Bologna over what was required to constitute a valid marriage. Both schools were solidly in the tradition of canon law which the Church had adopted from the Roman code of Justinian. They differed, however, in that "[T]he canonists of Bologna taught the

¹⁰ Pollock and Maitland, II, 365.

¹¹ Ibid., pp. 365-66.

need of consummation, whereas the schools of Paris maintained that when consent has once been given, a true and valid marriage has been constituted."¹²

According to the doctrine taught by Gratian at Bologna, mutual consent to marry was a mere spousal (matrimonium initiatum); consummation was required for a fully valid marriage (matrimonium ratum).¹³ Apparently this doctrine was followed in England before 1150 A.D. because Pollock and Maitland speaking of this period explain:

According to the doctrine that prevailed for a while, there was no marriage until men and women had become one flesh. In strictness of law all that was essential was this physical union accompanied by the intent to be thenceforth husband and wife. All that preceded this could be no more than an espousal (desponsatio) and the relationship between the spouses was one which was dissoluble; in particular it was dissolved if either of them contracted a perfected marriage with a third person.¹⁴

The canonists of Paris taught a somewhat different doctrine. Following the lead of Peter Lombard, they held that mutual consent alone without any consummation constituted a valid marriage. This consent, Peter Lombard specified, must be in words of the present time. In this way he set forth the famous classification between marriage contracts made in words of the present time (sponsalia per verba de praesenti) and those made in words of the future time (sponsalia per verba de futuro). This doctrine of Peter Lombard can be found in the fourth book of his Sentences (1147-50 A.D.).¹⁵

¹²Joyce, p. 58.

¹³Ibid.

¹⁴Pollock and Maitland, II, 366.

¹⁵Peter Lombard, Libri IV Sententiarum, IV. Dist. xxvii. Cap. III. "Efficiens autem causa matrimonii est consensus, non quilibet, sed per verba expressus, nec de futuro sed de praesenti. Si enim consentiunt in futurum, dicentes: Acci-

Briefly, then, for Peter Lombard and the Paris school, consent for the present by itself made a valid marriage; consent for the future was a mere promise. Whereas for Gratian and the canonists of Bologna, only physical union with the intention of marriage made a valid marriage; consent alone was not enough. "Mais ce dualisme ne pouvait pas subsister dans un grand corps de doctrine comme le droit canonique," remarks Esmein.¹⁶

The dualism was definitively resolved in the middle of the twelfth century by a series of decretals of Pope Alexander III (1159-81). These decretals established the law which would govern marriage in Europe and in England for centuries. Esmein writes that this new law

emprunta ses principaux éléments à la thèse de l'Eglise gallicane, mais ne la reçut pas en entier; sur certains points elle consacra définitivement l'opinion bolonaise; de là, un certain manque d'équilibre qui se fera sentir dans toute la suite du temps.¹⁷

Pope Alexander III admitted the distinction between the two types of spousals and asserted that spousals by words of the present time constituted a perfect marriage. Even if one of the spouses contracted a later marriage with a third person, this second marriage was null even if it had been consummated.¹⁸ The first decretal treating this matter can be found in the canon law compilation of Gregory IX (1227-41) and is taken from a letter of Pope Alexander to

pian te in virum, et ego te in uxorem; non iste consensus est efficax matrimonii . . . obligatio illa verborum, quibus consentiunt dicentes: Accipio te in virum, et ego te in uxorem, matrimonium facit. Ex his apparet quod consensus, id est pactio coniugalitatis, matrimonium facit, et ex tunc coniugium est, etiam si non praecessit vel secuta sit copula carnalis."

¹⁶ Esmein, I, 139.

¹⁷ Ibid.

¹⁸ Ibid., pp. 139-40.

the abbots of Sts. Cadmund and Demet. The heading of the decretal reads: "Si uir et mulier inuicem promittunt, quod ab eo tempore se pro coniugibus habebunt, contractum est matrimonium de praesenti. Hoc dicit et est casus notabilis." —

If a man and a woman promise each other that from that time they will have each other as man and wife, the contract is matrimony of the present time. The Pope says this and it is a notable case. The text of the decretal itself is given below.¹⁹

Another decretal taken from a letter of Pope Alexander to the Archbishop of Salerno clearly establishes the sufficiency of simple consent for a valid marriage. The chapter heading on this decretal reads: "Sponsalia de praesenti non solvuntur per sequens matrimonium etiam carnali copula consummatum." — Sponsals of the present time are not dissolved by a subsequent marriage even if it has been consummated. Hereafter the Church would uphold the validity of simple mutual consent for making a good marriage. The Pope includes a formula for this consent in his decretal. It is simple and remained in use even up to Shakespeare's time. The text of this decretal may be found in Richter's Corpus Juris Canonici. This great work collates the edition of the decretals cited above with other editions and presents a definitive compilation of the

¹⁹Gregorii IX Decretales (Venetiis, 1572), p. 839. C. IX. De Spons. IV. 1. "Ex parte C. mulieris nobis intimatum est, quod Andreas iuramentum praestitit quod eam ab eo tempore pro coniuge teneret, et ei sicut uxori suae fidem seruaret. Ipsa quoque eidem Andreas iurauit, se illum pro marito habituram, et fidem ei tanquam uiro proprio seruaturam: quo facto, prenominatus A. reliquit eandem. Quia igitur nemini licet uxorem suam sine manifesta causa fornicationis dimittere, et tunc eam sibi reconciliare debet, aut ipsa uiuente continere: Mandamus, quatenus eundem ut superinducta dimissa ad uxorem suam redeat, et eam maritali affectione pertractet, monitione promissa per ecclesiam censuram cogatis."

old canon law. The text in question here is cited below.²⁰

A final citation from a letter of Pope Alexander III to the Bishop of Norwich, England, is especially interesting and pertinent to this inquiry because it clearly asserts the sufficiency of simple consent for a valid marriage, summarizes what was then established as the canon law doctrine of marriage, and shows how this doctrine was received and applied in England. The letter is transcribed in Friedburg's Quinque Compilationes Antiquae,²¹ quoted in its more significant passages by Esmein,²² and translated by Pollock and Maitland.²³

Here is the translation and comment of Pollock and Maitland:

We understand from your letter that a certain man and woman at the command of their lord mutually received each other, no priest being present, and no such ceremony being performed as the English church is wont to employ, and then that before any physical union, another man solemnly married the said woman and knew her. We answer that if the first man and the woman received each other by mutual consent directed to the present time, saying the one to the other, "I receive you as mine (meum)," and "I receive you as mine (meum)," then, albeit there was no ceremony as aforesaid, and albeit there was no carnal knowledge, the woman ought to be restored to the first man, for after such a consent she could not and ought not to marry another. If however there was no such consent by such words as aforesaid, and no sexual union preceded by a consent de futuro, then the woman must be left to the second man

²⁰ Aemilius Richter, Corpus Juris Canonici (Leipzig, 1881), II, 680-81. C. III X. De Sponsa Duorum. IV. 4. "Quod si inter virum et mulierem legitimus consensus interveniat de praesenti, ita quidem quod unus alterum in suo mutuo consensu verbis consuetis expresse recipiat, utroque dicente: Ego te accipio in meum et ego accipio te in meum, sive sit iuramentum interpositum, sive non, non licet mulieri alii nubere. Et si nupserit, etiamsi carnalis copula sit secuta, ab eo separari debet et, ut ad primum redeat, ecclesiastica districtione compelli, quamvis aliter a quibusdam praedecessoribus nostris sit aliquando judicatum."

²¹ Aemilius Friedburg, Quinque Compilationes Antiquae, 2nd ed., (Graz, 1956), p. 47.

²² Esmein, I, 140.

²³ Pollock and Maitland, II, 369.

who subsequently received her and knew her, and she must be absolved from the suit of the first man; and if he has given faith or sworn an oath to marry the woman then a penance must be set him for the breach of his faith or of his oath. But in case either of the parties shall have appealed, then, unless an appeal is excluded by the terms of the commission, you are to defer to that appeal.²⁴

The legal historians explain: "We have given this decretal at length for it shows how complete was the sway that the Catholic canon law wielded in the England of Henry II's time, and it also briefly sums up that law's doctrine of marriage."²⁵

It was by this series of decretals, then, that the Paris-Bologna differences were resolved and the canonical requirements for a valid marriage were established.

Such was the final decision of the Holy See. Marriage is essentially a contract: and, as such, nothing else is needed to establish it but the consent of the parties. Neither the ceremonies prescribed by the Church nor the consummation of the union are required to give force to the contract. The principle Contractus perfectus est per solum consensum holds good for it.²⁶

Once it has been established that consent was constitutive of a valid marriage in the old canon law, the customs and rites which surrounded it must be explained, especially the two types of spousals and the difference between matrimony initiatum, ratum and consummatum. As indicated above, Peter Lombard employed the distinction between sponsalia per verba de praesenti and sponsalia per verba de futuro. Gratian had distinguished matrimonium initiatum and ratum.

²⁴ Pollock and Maitland, II, 369.

²⁵ Ibid.

²⁶ Joyce, p. 65.

Both of these distinctions with some modifications were acknowledged by Pope Alexander and incorporated into the body of canon law. They call for further explanation here because various types of spousal and marriage contracts occur in Measure for Measure.

Sponsalia per Verba de Futuro

The de futuro contract of spousals consisted in a mutual promise to wed sometime in the future. It was roughly the equivalent of a modern engagement and could be terminated at will by either party.²⁷ After a de futuro contract the spouses (in the original sense of the word — those who have promised to wed, from the Latin spondere, to promise) were not married, were not known as man and wife, and could not lawfully live together.

For an example of how a de futuro spousal was contracted in the twelfth century, recall the words of Peter Lombard: "Now if they give their consent for the future, saying, I will take you for my husband, and I will take you for my wife, that consent is not an efficacious cause of matrimony."²⁸ In Shakespeare's time the formula of future consent was essentially the same. Henry Swinburne, a York judge of the late sixteenth century, writes:

First and principally Spousals be either de futuro, of that which is to come, or else de praesenti, of that which is present: Spousals de futuro are a mutual Promise or Consent of Marriage to be had afterwards: As when the man saith to the Woman, I will take thee to my Wife and

²⁷ Pollock and Maitland, II, 368. This doctrine also found in the decretal of Innocent III (1198-1216), C. II. X. IV, 1.

²⁸ Lombard, Sentences, IV, 27, 3.

she then answereth, I will take thee to my Husband.²⁹

One peculiar effect of sponsals de futuro was that if such a spousal was followed by sexual intercourse, it was automatically converted into a de iure marriage.³⁰ This was the teaching of Alexander III,³¹ confirmed and perpetuated as law by Innocent III,³² and by Gregory IX.³³ The reason for this teaching, the popes declared, was that it must be presumed that before the copula took place, the sponsalia de futuro had been implemented by a consent to be man and wife per verba de praesenti which was all that was required for a valid marriage.³⁴

Briefly, then, sponsalia de futuro was a mutual promise to wed sometime in the future; the sponsi were not man and wife, were not to live together, and the sponsals could be broken off without much difficulty.

Sponsalia per Verba de Praesenti

In its original and literal signification the word "sponsalia" strictly meant only mutual promises for a future wedding. But when the doctrine that present consent made marriage was authorized and confirmed in the middle of the twelfth century, certain types of sponsals, those made in the present time,

²⁹Henry Swinburne, A Treatise of Sponsals or Matrimonial Contracts (London, 1636), p. 8. This book was written about one hundred years before it was published. Swinburne died in 1623.

³⁰Pollock and Maitland, II, 368.

³¹C. III. X. IV, 5.

³²C. VI. X. IV, 5.

³³C. XXX. X. IV, 1.

³⁴Joyce, pp. 88-89.

were acknowledged to constitute in effect a valid marriage in themselves.

A formula for contracting spousals de praesenti can be found in the letter of Alexander III to the Bishop of Norwich cited above:

. . . if the first man and the woman received each other by mutual consent directed to the present time, saying the one to the other, "I receive you as mine (meum)," and "I receive you as mine (meum)," then, albeit there was no ceremony as aforesaid, and albeit there was no carnal knowledge, the woman ought to be restored to the first man, for after such a consent she could not and ought not to marry another.³⁵

That the same formulation of present consent still obtained in Shakespeare's time in England is seen in Swinburne's example: "Spousals de praesenti are a mutual Promise of Contract of present Matrimony; as when the man doth say to the Woman I do take thee to my Wife and she then answereth I do take thee to my Husband."³⁶

It will be important for our study of Measure for Measure to know clearly the effects of the de praesenti spousal contract. The present consent constituted a valid marriage, at all events an initiate marriage (matrimonium initiatum). It became matrimonium ratum when solemnized in church with the priest's blessing, and matrimonium consummatum when physically consummated. But after the simple consent of a de praesenti contract the spouses were conjuges, were known and referred to as man and wife, and the union between them was almost as indissoluble as if it had become a consummate marriage. Not quite so indissoluble however.³⁷

³⁵Pollock and Maitland, II, 369.

³⁶Swinburne, p. 8.

³⁷Pollock and Maitland, II, 366.

There were only two reasons for which a union made by a de praesenti contract and still not consummated could be dissolved by the power of the pope alone; either because of adultery, or in order to permit one of the parties to enter religion. Esmain explains how such a dissolution could come about:

On en conclut en effet que le pape, ayant la plenitude du pouvoir législatif, pouvait dissoudre le lien du mariage, tant que la copula carnalis n'était pas intervenue. C'est une règle qui s'implantera dans le droit canonique, et établira une nouvelle différence entre le matri-
monium consummatum et non consummatum.³⁸

This power to dissolve an unconsummated de praesenti contract was used and perhaps originated by Pope Alexander III; instances of it can be found in his decretals.³⁹ One of these decretals (C. II. X. III, 32) bears this heading:

"Ante matrimonium consummatum potest alter coniugum, etiam altero invito, religionem ingredi; sed remanens in saeculo potest ad secunda vota transire." —

Before a marriage has been consummated either of the spouses is able to enter religion, even if the other is opposed to this; the party remaining in the world, however, is able to enter another contract.

If the union had been consummated, however, Father Joyce says: "No earthly power, not even that of the Church herself, can dissolve a consummated marriage

³⁸Esmain, I, 145-46.

³⁹C. II. X. III, 32. "Verum post consensum legitimum de praesenti licitum est alteri, altero etiam repugnante eligere monasterium, sicut etiam sancti quidam de nuptiis vocati fuerunt dummodo carnalis commixtio non intervenerit inter eos, et alteri remanenti, si commonitus continentiam servare noluerit, licitum est ad secunda vota transire, quia, quum non fuissent uno caro simul effecti, satis potest unus ad Deum transire, et alter in saeculo remanere." — Richter, II, 579.

Another decretal of Alexander III treating the same matter is C. XVI. X. IV, 1. — Richter, II, 667.

between two baptized Christians."⁴⁰

Regular Solemn Celebration of Marriage

In its perfectly regular and public form, marriage was always celebrated in front of the church (celebratio in facie ecclesiae). There the marriage was solemnized and was followed by Mass and the blessing of the priest within.

In front of the church the two parties to be married made their desponsatio. Spousals de futuro and de praesenti were both made, or they were repeated if they had been made before elsewhere. This mutual consent, as noted above, was all that was required for the valid marriage. The role of the priest in front of the church was simply to elicit and receive and witness the double declaration of spousals.⁴¹ The wedding party then went inside the church for the Nuptial Mass and the blessing of the union by the priest. This solemn celebration as ordered by the Church constituted a perfectly regular marriage and was complete with all legal effects and benefits.

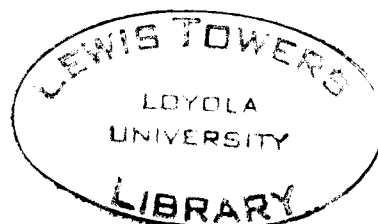
Irregular Matrimonial Contracts

Because of serious evils, which will be explained presently, the Church from its earliest years insisted on the public celebration of marriage in front of the church. But despite repeated urging to the contrary, lovers often exchanged their mutual consent in other places, sometimes with witnesses,⁴² some-

⁴⁰ Joyce, pp. 39-40

⁴¹ Esmein, I, 200-01.

⁴² See Appendix for an example of this.



times without.⁴³ Because of the legislation cited above, the Church always recognized that these contracts made valid marriages, though when they were made in this way, other than in front of the church, they were deemed irregular by canon law. The civil law of England also looked down upon these unsolemnized unions and deprived them of many benefits accorded a solemnized union. Swinburne writes that

. . . until the Celebration of the Marriage, they (Our Temporal Lawyers) do not repute the affianced Couple for one Person, nor deem of their issue as lawful, nor doth he gain any Propriety in her Goods, nor she any Dower in his Lands by force of the Contract of Matrimony only without Solemnization.⁴⁴

It will be sufficient to note here that after either form of private spousal (de futuro or de praesenti) before the marriage was celebrated in facie ecclesiae, the affianced were not to cohabit. This was forbidden by law and was a serious sin.⁴⁵

Clandestine Spousals

Among the types of irregular marriages mentioned above, we mentioned those that were contracted between lovers without any witnesses whatsoever. These were known as clandestine spousals and were so frequent and so troublesome that they call for a more detailed treatment here. Besides this, an instance of this type of spousal is found in Measure for Measure.

⁴³ Measure for Measure contains examples of both types.

⁴⁴ Swinburne, p. 2.

⁴⁵ See below pp. 40-42.

Very briefly, the trouble with these clandestine spousals was that the parties could secretly exchange their mutual consent to be man and wife in words of the present time and afterwards one of the parties, usually the man after his lust was satisfied, would deny that he had made such a contract, and because there were no witnesses the woman could not defend her position.

In an indirect way this trouble arose out of the legislation concerning the requirements for a valid marriage. As long as the Church recognized a simple mutual consent without witnesses as sufficient for the validity of a marriage, the way was open for abuses. In order to avoid this trouble, the Church always insisted upon the publicity of marriage. It made clandestine spousals illicit and irregular, imposed ecclesiastical penalties on those that entered into them, but it never called their validity into question. A clandestine spousal de praesenti, then, would constitute a valid but illicit and irregular marriage.

"Clandestine marriages," writes Father Joyce, "constituted one of the greatest problems with which the Church had to deal in the Middle Ages. Not until the council of Trent was a remedy found for the abuse. Marriages thus made in secret with no witnesses who could attest them, were a source of the greatest evil to the whole social order."⁴⁶

More precisely, now, what was a clandestine marriage? Esmein says that the term "clandestine marriage" was variously used. Sometimes it designated a union which had been contracted without any witnesses and was not able to be

⁴⁶Joyce, p. 107.

proved before the law. Sometimes it indicated a marriage which could indeed be proved but which had been contracted without the prescribed solemnities. And after the Lateran Council (1215) demanded as a general law the publication of banns, a marriage would then be considered clandestine which had not been preceded by these "denunciations."⁴⁷

Esmein writes: "L'Eglise, des la plus haute antiquité, avait blâmé et prohibé les mariages clandestins. Elle recommandait aux fidèles de soumettre à l'autorité ecclésiastique leurs mariages projetés, de contracter publiquement mariage en observant les coutumes de chaque pays, et de faire bénir leur union par le prêtre."⁴⁸ And yet despite all this, Esmein goes on to remark, neither the ecclesiastical nor civil authority ever subjected the validity of marriage to the observation of these prescriptions.⁴⁹ This is the doctrine of the classic canon law. Clandestine marriages were always valid, but never illicit, regular, or legal. They were sinful as contraventions of the ecclesiastical law.

Richard Whitforde in his book A Werke for Householdere published in England in 1537 gives an example of the kind of abuse that often accompanied clandestine contracts without any witnesses.

For many men whan they can not obteyn theyr vnclene dasyre of the woman wyl promyse marryage, & ther vpon make a contracte promyse, & gyve fayth & trowth othe unto other sayenge. Here I take the Margery vnto my wyfe, I therto plyght the my trowth. And she agayne, unto hym in

⁴⁷ Esmein, I, 205.

⁴⁸ Ibid., 198.

⁴⁹ Ibid.

lyke maner. And after that done, they suppose they maye lawfully vse thyr violence behauiour, and somtyme the acte and dede doth folow, vnto the great offence of god & theyr owne soules. It is a great iopardy therefore to make any suche contractes, specially amonge them selfe secretly alone, without recordes, whiche must be two at the least.⁵⁰

Fifty years later and close to the time of Measure for Measure, Henry Swinburne listed some more of the "manifold discommodities" that can follow clandestine spousals.

But the Law doth forbid all Persons to make Secret Contracts of Spousals, or Matrimony; and that justly, considering the manifold discommodities depending thereupon, namely, for that hereby it cometh to pass oftentimes, that the Parties secretly contracting are otherwise formally affianced, or so near in Blood that they cannot be Married; or being free from those impediments, yet do they alter their purposes, denying and breaking their promises, whence Perjuries, Adulteries, and Bastardies, with many more intollerable mischiefs do succeed.⁵¹

Since there would be no evidence for a clandestine marriage without witnesses, cohabitation to all appearances could only be judged fornication, and such a relation would be subject to any legislation against fornication. This is borne out by the Sarum Manual of liturgy published in London in 1554.

Clandestine marriages are forbidden for two reasons: first, lest the expectation of marriage lead to fornication; and secondly, lest those who are really married be unjustly separated. For in secret marriages it often happens that one of the parties alters his mind, and sends the other away destitute of all evidence and powerless to obtain remedy for the wrong.⁵²

⁵⁰ Richard Whitforde, A Worke for Householdors, 2nd ed., (England, 1537), sign. B. iii; cited in Howard, A History of Matrimonial Institutions (Chicago, 1904), I, 350.

⁵¹ Swinburne, p. 194.

⁵² Manuale Sarisburiense (London, 1554), f. xxviii. "Prohibentur autem clandestine matrimonia duplici ratione: viz., ne sub spe matrimonii committatur fornicatio: et ne matrimonialiter conjuncti iniuste separentur. Saepe enim in matrimonio occulto alter conjugum mutat propositum, et dimittit reliquum probationis destitutum et sine remedio restitutionis." Cited in Joyce, p. 111.

Countermeasures

In order to check these abuses, as mentioned above, the Church decreed that a clandestine marriage was sinful, a violation of Church law, and punishable by canonical penalties.⁵³

Almost a century before the decretals of Pope Alexander III, Archbishop Lanfranc in a national synod held at Worcester in 1076 decreed "ut nullus filiam suam, vel cognatam, det alicui, absque benedictione sacerdotali. Si aliter fecerit, non ut legitimus conjugium sed ut fornicatorium, judicabitur." — "that no man give his daughter or kinswoman in marriage without the priest's blessing. If marriage is made otherwise, it will not be judged legitimate, but fornicatory."⁵⁴ Note that Lanfranc does not deny the validity of such a union, only its legitimacy or regularity.

During his pontificate Alexander III (1159-81) ordered that clandestine unions should be forbidden under pain of excommunication.⁵⁵

We find the English Archbishops Richard and Walter in 1175 and 1200 ordering the publication of banns and public celebration of marriage in facie ecclesie.⁵⁶

⁵³ Eusebius, I, 205-06.

⁵⁴ Harding, p. 142, citing Parker, De antiquitate britannicae ecclesiae (1729) p. 173.

⁵⁵ Joyce, p. 111.

⁵⁶ John Johnson, A Collection of the Laws and Canons of the Church of England, 2 vols., (Oxford, 1850-51). Canon #17 of Archbishop Richard made in Provincial Synod at London, 1175. "Let no faithful man, of what degree soever, marry in private, but in public, by receiving the priest's benediction. If any priest be discovered to have married in private let him be suspended from his office for three years." — Johnson, II, 64. This canon was taken from the decrees of Pope Hormisdas as found in Gratian, Decret. Hormis. P. (A.D. 514).

In the Lateran Council of 1215 A. D., Pope Innocent III (1198-1216 A.D.) "extended over the whole of western Christendom the custom that had hitherto obtained in some countries of 'publishing the banns of marriage,' that is, of calling upon all and singular to declare any cause or just impediment that could be urged against the proposed union."⁵⁷ The words of the conciliar decree are found in the old canon law.⁵⁸

Decrees ordering the publicity and solemnization of marriage are found repeatedly in the constitutions of the English provincial synods and the injunctions of the English bishops.⁵⁹

The second type of clandestine marriage contract referred to above was that made before witnesses, but not in facie ecclesiae. There is also an instance of this type in Measure for Measure. The contract made in this way was ordinarily made with the intention of solemnizing the marriage later on in front of the church. This type of contract was also prohibited under the pro-

2 Concil, tom. viii. col. 530.

Canon #11 of Archbishop Hubert Walter made in General Synod at Westminster, 1200 A.D. "Let no marriage be contracted without banns thrice published in church, nor between persons unknown. Let none be joined in marriage but publicly in the face of the church, otherwise let it not be allowed of, except by the spiritual authority of the bishop." — Johnson, II, 91.

⁵⁷ Pollock and Maitland, II, 368-69.

⁵⁸ C. IV. X. IV, 3. ". . . Unde predecessorum nostrorum uestigiis inhaerendo, clandestina coniugia penitus inhibemus, prohibentes etiam, ne quis sacerdos talibus interesse praesumat. Quare specialem quorundam locorum consuetudinem, ad alia generaliter proroganda statuimus, ut cum matrimonia fuerint contrahenda, in ecclesiis per praesbyteros publice proponantur competenti termino praefinito: ut intra illum qui uoluerit & ualuerit legitimum impedimentum opponat, & ipsi praesbyteri nihilominus inuestigent, utrum aliquod obsistat impedimentum . . ." — Richter, II.

⁵⁹ See Johnson, II, "Marriage Laws."

hibitions against clandestine contracts cited above. But because of the intention to solemnize the union later, it was apparently not considered to be seriously sinful. This may be inferred from a comment of the great English canonist William Lyndwood in the fifteenth century and an "Injunction" of Bishop Hooper of Gloucester in 1551. Lyndwood writes: "He that marries only without solemnity is to be punished lightly, but if the bridegroom know his bride before the solemn benedict, and making his oblation in the church, he is to be punished as a contemner of ecclesiastical custom; that is, as a transgressor of the divine will."⁶⁰ Bishop Hooper's "Injunction" after his diocesan visitation of 1551 reads:

XXVII. Item, that when any persons be contracted and faithed together in matrimony, either by two or three records out of the congregation, or else openly proclaimed in church by banns, after the godly laws of the realm, that the same persons be compelled with all convenient speed to marry openly in the face of the church, and the persons contracted neither cohabitare nor dwell together before the matrimony be solemnized.⁶¹

The last two remarks of Bishop Hooper about the anticipation of solemnization and the regularization of irregular contracts will be taken up for fuller consideration in the next two sections.

Anticipation of Solemnization

The canonical distinction between validity and liceity is not often clear to the laity, and it is especially in danger of being lost on young lovers a-

⁶⁰Johnson, II, 396. Quotation from gloss (e) citing William Lyndwood on Constitution 11 of Archbishop Stratford made in Provincial Synod at London, 1343.

⁶¹Bishop John Hooper, Later Writings of Bishop Hooper, ed. Chas. Nevins for Parker Soc. Publications (Cambridge, England, 1852), p. 138.

bout to be married. So, as long as the Church acknowledged the sufficiency of simple consent for a valid marriage, and the laity knew this, there was a great temptation for lovers pledged to be man and wife by words of the present time to consummate their union before it was solemnized in front of the church.

Father Joyce cites the warning of William Harrington on this point: "William Harrington (+1523), a pre-Reformation English divine, says plainly that a fresh mortal sin is committed, if the parties who have contracted a clandestine marriage commence conjugal life before they have received the Church's blessing.

He writes:

They which done make such a (clandestinat) matrimony are accursed in the dede doyng, notwithstanding that matrimony is valeable and holdeth before God into so much that and the one of the same forsake the other and take another, they lyve in a dampnable advoutry. . . And when matrimony is thus lawfully made, yet the man maye not possesse the woman as his wife, nor the woman the man as her husbonde, nor fleshely meddle togyther as man and wyfe: afore such tyme as that matrimony be approved and solempnyssed by our mother Holy Church, and yf they do they sinne deadly. (Commendacions of Matrymony (London, 1528), f. iv.)⁶²

That this anticipation of solemnization was a serious offence is also borne out by the statement of William Lyndwood cited at the end of the last section. Pallock and Maitland confirm the point: "The husband and wife who have intercourse with each other before the church has blessed their marriage, sin and should be put to penance; they will be compelled by spiritual censures to celebrate their marriage before the face of the church; but they were married already when they exchanged a consent per verba de praesenti . . ."⁶³ The parties who anticipated solemnization in this way were guilty of fornication.

⁶²Joyce, p. 110.

⁶³Pallock and Maitland, II, 372-73.

From his legal researches Professor Harding confirms this judgment concerning the anticipation of solemnization.

Under no circumstances were a man and woman to have physical union before their relationship had been blessed by the church. No matter what type of betrothal contract was involved, such a union was held to be sinful. At the same time if the couple could prove in an ecclesiastical court that their intercourse had been preceded by a trothplight, the union, though sinful, was recognized as perfectly valid . . . If consummation did take place, the contracting parties had committed a grievous sin, but the validity of the marriage was not in the least affected.⁶⁴

It would appear that Shakespeare was quite aware of the sinfulness of anticipating solemnization because Harding says, "[i]t can be categorically stated that there is not a single play of Shakespeare in which lovers whom the author has obviously intended to represent as being above moral reproach knowingly consummate their union before the church has blessed it."⁶⁵

It is important for us to be aware of the moral evaluation of this anticipation of solemnization; it occurs twice in Measure for Measure.

Regularization of Irregular Unions

When a suit concerning a secret marriage contract was brought before an ecclesiastical court and the court decided for the validity of the clandestine marriage, it ordered that the marriage be publicly celebrated and solemnized in facie ecclesiae as soon as possible. If a man refused to carry out this order within forty days, he was excommunicated and the Ordinary notified the Court of Chancery of the contempt. Whereupon a writ de excommunicando capiende was is-

⁶⁴Harding, p. 143.

⁶⁵Ibid., p. 150.

sued, the delinquent was apprehended and imprisoned until he consented to carry out the order of the judge.⁶⁶

Ordinarily, however, there was no lawsuit, and a couple who had exchanged consent irregularly, fully intended to have their union solemnized later on in front of the church. When this happened the marriage that was solemnized in front of the church was already a fact before the law by reason of the de prae-senti contract. Thus by renewing their contract before the priest (or minister) an irregular marriage was easily transformed into a completely regular union. All that was required for this was to publicize the union and solemnize it according to the established forms.⁶⁷

From this brief review of the difficulties which accompanied clandestine marriages and abuses, it is perfectly clear that the legislation accepting simple consent alone for a valid marriage was far from satisfactory. No effective remedy in Church law was proposed for these evils until the Council of Trent in 1563.

Tridentine Reform

At the twenty-fourth session of the Council of Trent in 1563, the Council decreed that marriage would no longer be a contract needing no external formalities and holding good in virtue of simple consent. Thereafter it became a contractus solemnus requiring for validity the presence of three witnesses, one of whom was to be the parish priest or another priest appointed by him or the

⁶⁶Joyce, p. 139.

⁶⁷Esmein, I, 207-08.

Ordinary.⁶⁸ The Tridentine decree "Tametsi" began by asserting that no one must doubt that the former clandestine marriages were indeed true matrimony, although the Church had always detested and prohibited them. But because of the many evils which accompanied them the council ordered that banns must be published, that marriage must be solemnized in facie ecclesiae, and if anyone attempts to contract marriage other than in the presence of a priest and two witnesses, that contract is null and void.⁶⁹ The heading of the decree reads: "Matrimonii solemniter contrahendi forma in concilio Lateranensi praescripta innovatur; . . . Qui aliter quam praesentibus parcho et duobus vel tribus testibus contrahit nihil agit." -- "The form for solemnly contracting matrimony as prescribed in the Lateran council is changed; . . . He who makes this contract otherwise than in the presence of the parish priest and two or three witnesses effects nothing at all." The pertinent parts of the decree containing a review of the Church's attitude toward clandestine marriages and a formula for contracting a regular marriage are given in Appendix IV.

By this decree the evils of clandestine marriages, which troubled civil and ecclesiastical authorities for so many centuries, were swept away from most of western Christendom. The decree also established the requirement of a priest and two witnesses for the validity of marriage.

⁶⁸Joyce, p. 127.

⁶⁹Fridericus Schulte et Aemilius Richter, Canones et Decreta Concilii Tridentini (Lipsiae, 1853), pp. 256-58. Sessio XXIV. De Sacramento Matrimonii Caput I.

The Tridentine decree "Tasetsi" was not of course received or published in Protestant countries. Thus in England and in other lands there was no change made in the requirements for marriage and the old law continued to hold good. In his History of Matrimonial Institutions George Howard states that, "[I]n England during the whole period between the Reformation and the Commonwealth ecclesiastical celebration was the rule; and the spiritual courts, retaining their ancient jurisdiction in matrimonial causes, still recognized the principles of the canon law, . . . Hence clandestine contracts de praesenti were valid and could be maintained against regular marriages subsequently solemnized in church."⁷⁰

The Reformation and the Canon Law in England

If the Tridentine marriage reforms were not received in England because of Henry VIII's break with Rome thirty years before, we must then ask what effect that break itself had on the Roman canon law concerning marriage in England. Did it remain the same, or was it altered in any way? Briefly, there were four changes made: 1) after the Reformation, Parliament would legislate the law for the courts spiritual; 2) marriage case appeals to Rome were denied; 3) many laws relating to affinity were changed or abolished; and 4) the study of canon law was prohibited. This last change is most significant. The main body of canon law concerning marriage, however, remained unchanged.

William Holdsworth sums up the situation this way:

The existing marriage laws at the time of the break with Rome were founded upon the canon law. . . .Nor did the Reformation settlement make

⁷⁰Howard, I, 376.

any very large change. The marriage law still continued to be administered in the ecclesiastical courts; and, as we have seen the law administered by those courts was the canon law, in so far as it was not contrary to the statutes which had established the Church of England on its new basis. The one subject upon which the legislature made new law was upon the degrees of relationship within which marriage was prohibited.⁷¹

In his fine book Roman Canon Law in the Church of England Frederic Maitland writes that the Reformation was a sudden catastrophe in the history of the spiritual courts.

Henceforth they are expected to enforce, and without complaint they do enforce, statutes of the temporal legislature, acts of the English Parliament. Henceforth not only is their sphere of action limited by the secular power — that is a very old phenomenon — but their decisions are dictated to them by acts of parliament — and that is a very new phenomenon.⁷²

The first of these acts of Parliament relating to marriage was "An Act that the Appeals in such Cases as have been used to be pursued to the See of Rome shall not be from henceforth had ne used but within this Realm." — 24 Hen. VIII. c. 12, A.D. 1532.⁷³ This act was later repealed by 1 & 2 Philip and Mary. c. 8 (1554),⁷⁴ and was finally reinstated as law by 1 Elizabeth. c. 1 (1558).⁷⁵ Thus after 1558 appeals of marriage cases to Rome were forbidden.

We noticed in Holdsworth's statement that only the laws touching affinity were greatly affected. Father Joyce assures us that "[t]he law as to clandestine marriage remained substantially the same after the breach with Rome as it

⁷¹ Holdsworth, IV, 490-91.

⁷² Maitland, pp. 90-91.

⁷³ John Raithby, ed., The Statutes at Large of England and Great Britain (London, 1811), III, 134-36.

⁷⁴ Ibid., IV, 39.

⁷⁵ Ibid., 109.

had been before; . . . contracts de praesenti retained their value as true marriage; and they continued to be treated as such in the ecclesiastical and civil courts."⁷⁶

The last mentioned effect of the breach with Rome, the prohibiting of the study of canon law, is more important than it appears at first sight. For though the main body of canon law remained the same, the popular and professional understanding of it, especially in its fine points, could not help being lost, somewhat, because of this prohibition. Here is Frederic Maitland's comment on the prohibition:

But the great breach of continuity has yet to be noted. The academic study of the canon law was prohibited. No step that Henry took was more momentous. He cut the very life thread of the old learning. The ecclesiastical judges in time to come might administer such of the ancient rules as were not contrariant nor repugnant to the laws (newly interpreted) of God and the statutes of our lord the king; but they could not have been, like their predecessors in time past, steeped and soaked for many a year in the papal law-books and their ultra-papal glosses. And as if this were not enough, Henry encouraged and endowed the study of 'the civil law,' and the unhallowed civilian usurped the place of the canonist on the bench.⁷⁷

This completes our study of the origins and development and transmission of the canon law regulating marriage.

MARRIAGE LAW STATUS IN ENGLAND AROUND 1604

A statement of the status of the marriage law in England at the time Shakespeare wrote Measure for Measure will give us a summary review of what we have seen already and the key to understanding the marriage relationships in

⁷⁶Joyce, p. 137.

⁷⁷Maitland, p. 92.

in the play. Just such a statement, clear, concise and authoritative, can be found in Henry Swinburne's book, A Treatise of Spousals or Matrimonial Contracts.

As his publisher informs us, Swinburne was a "Judge of the Prerogative Court at York for many years before he dyed; which Place he executed with great Integrity and Applause."⁷⁸ Joyce confirms that Swinburne "is a recognized authority for the law of marriage obtaining at this period."⁷⁹ The period in question is exactly Shakespeare's period. Swinburne died in 1623, though his book was not published until 1686.

We will see first how regular marriages were formed, and then how clandestine contracts were made and how they were looked on in Shakespeare's day.

The ritual for celebrating and solemnizing a perfectly regular marriage in England was set forth in the Liturgy of Queen Elizabeth (1559).⁸⁰ In Swinburne's book the ceremony is summarized briefly, showing how it called for a statement (or repetition) of the two types of spousals followed by the minister's blessing. The Nuptial Mass had been dropped from the English ceremony by this time.

In our Publick Office of Marriage, Spousals and Matrimony are united, and performed in one continued Act; When the Minister demands, Wilt thou have this Woman to thy wedded wife, &c. And the man answers, I will, and so the Woman vice versa, there's a Specimen of Spousals de futuro. When the Man repeats the words, I. N. take thee N. to my wedded wife, &c. and so the Woman vice versa, there's the form of Spousals de praesenti, which in Substance are perfect Matrimony, as I said

⁷⁸ Swinburne, fol. al.

⁷⁹ Joyce, p. 138.

⁸⁰ See Appendix.

before) though not as to all Legal Effects. When the Minister adds his Benediction, and pronounces them to be Man and Wife, then 'tis a perfect Marriage to all constructions and purposes in Law.⁸¹

So much for the regular celebration of marriage.

Because the Tridentine reform was not received in England, clandestine marriages were still valid and frequently contracted and followed by their numerous social and domestic evils. And so Swinburne tells us:

The Law doth forbid all Persons to make Secret contracts of Spousals, or Matrimony; and that justly, considering the manifold discommodities depending thereupon And yet Secret Marriages are done indeed against the Law, but being contracted, cannot be dissolved because public Solemnities are not of the Substance of Spousals, or of Matrimony, but consent only; So that it may be justly inferred, that the only want of Solemnity doth not hurt the Contract.⁸²

And in another place:

[A]lbeit there be no Witnesses of the Contract, yet the Parties having verily, (though secretly) Contracted Matrimony, they are very Man and Wife before God; neither can either of them with safe Conscience Marry elsewhere, so long as the other party liveth; for proof is not of the Essence of Matrimony; . . .⁸³

Spousals de futuro, as a simple promise of future marriage, may still be easily dissolved:

Understand therefore, that that man and that woman, which do contract Spousals de futuro, as (I will take thee to my Wife; I will take thee to my Husband) are not very Husband and Wife, neither so reputed in Law, except in certain Cases hereafter expressed, which excepted, they may by mutual agreement dissolve those Spousals, and safely match themselves elsewhere; . . .⁸⁴

Spousals de praesenti by themselves still constitute a valid marriage

⁸¹ Swinburne, A 3r.

⁸² Ibid., pp. 184-85.

⁸³ Ibid., p. 87.

⁸⁴ Ibid., pp. 12-13.

hardly dissoluble if not consummated and altogether indissoluble if consummated:

But that woman, and that man, which have contracted Spousals de praesenti; as, (I do take thee to my Wife) and (I do take thee to my Husband) cannot by any Agreement dissolve those Spousals, but are reputed for very Husband and Wife in respect of the Substance, and indissoluble Knot of Matrimony; and therefore if either of them should in fact proceed to solemnize Matrimony with any other person, consummating the same by Carnal Copulation, and Procreation of Children: This Matrimony is to be dissolved as unlawful, the Parties marrying to be punished as Adulterers, and their Issue in danger of Bastardy.⁸⁵

And again, ". . . Spousals de praesenti, though not consummate, be in truth and substance very Matrimony, and therefore perpetually indissoluble, except for Adultery."⁸⁶

And as it was before, ". . . the Persons contracting de praesenti may by Course of Law be compelled to Solemnize Matrimony according to the Rites and Ceremonies of the Church."⁸⁷

And finally, anticipation of solemnization after spousals, though it involved a serious sin, consummated a valid though illicit marriage and made it more firm and wholly indissoluble.

This is the way the letter of the law concerning marriage stood in England in 1604 A.D.

The Hardwicke Act

It may be remarked in passing that it was not until 1753 that Parliament passed a law requiring a minister and two witnesses for the validity of mar-

⁸⁵ Ibid., p. 13.

⁸⁶ Ibid., p. 15.

⁸⁷ Ibid., fol. A 2r - A 3.

marriage in England. Thus the Church of England suffered the evils of clandestine marriages for about two hundred years after they were abolished by the Roman Catholic Church. The act of Parliament which changed the old law was the Hardwicke Act (26 Geo. II. c. 33), passed in 1753.⁸⁸

MARRIAGE CUSTOMS IN ELIZABETHIAN ENGLAND

What Henry Swinburne explained above was the letter of the law, somewhat complex and involved, yet clear to the canon lawyers before the Reformation and clear enough to some civil lawyers like Swinburne himself even after the study of canon law had been abolished. But how this law with its fine details and distinctions was understood and observed by the general populace was understandably quite another matter.

Where the popular opinion and custom differed most from the letter of the law was in the matter of consummating de praesenti contracts before solemnization in church. The ecclesiastical authorities judged this a serious sin as we have seen above. But many lovers, knowing that the church and the law recognized a de praesenti contract as a valid marriage (matrimonium initiatum), proceeded to consummation before solemnization (matrimonium ratum). Professor Harding points out that

...in rural areas and among the lower elements of urban populations, the evidence points to the widespread neglect of the canonical distinction between matrimonium initiatum and matrimonium ratum. Protected by the law as they were, young lovers betrothed to each other on the basis of a de praesenti contract proved all too likely to ignore the distinction. Nor is it difficult to understand the matter from their point of view. . . . [M]any of them doubtless did come to the conclusion that the sin, if sin it was, could not possibly be as grave as the

⁸⁸ Raithby, XI, 233-36.

church made it out to be. Unless they did come to that conclusion, or something very near it, it would be difficult to account for the sheer numbers of secretly contracted marriages. As a rule, eternal damnation is not courted en masse. Such, in any case, was the situation at the end of the thirteenth century. Rather astonishingly, it was still the situation by the beginning of the sixteenth century. No progress had been made. Nothing had changed.⁸⁹

And by the beginning of the seventeenth century no progress had been made in England, though things had been changed already by Rome. The situation of consummating spousals before solemnization shows up twice in Measure for Measure.

A quotation from T. W. Baldwin's Shakespeare's Small Latine and Lesse Greek indicates one of the reasons why consummation after spousals was popularly considered only a less serious sin.

Nor was marriage so made (by consummating a de praesenti spousal) looked upon as a heinous crime by Erasmus. Elsewhere he has presented this situation. . . . Eulalia: 'Sed inter vos intercesserat pactum conubiale?' Xantippe: 'Intercesserat.' Eulalia: 'Leuius igitur peccatum est.' (Erasmus: Opera (1703), I, 707.) These colloquies of Erasmus were read almost universally in the grammar schools of the sixteenth century.⁹⁰ This opinion of Erasmus is thus the official opinion of the time.

Baldwin might better have called this the general opinion of the time; opinion is hardly official, and however true this may have been, it did not square with the official legal judgment of the time.

What is especially interesting and pertinent to this point is that to all appearances Shakespeare's own marriage to Anne Hathaway was made by a de praesenti spousal and consummated before he got a licence and solemnized their

⁸⁹Harding, p. 144.

⁹⁰Thomas W. Baldwin, Shakespeare's Small Latine and Lesse Greek (Urbana, 1944), I, 740.

union in church. In a thorough and scholarly book titled Shakespeare's Marriage Joseph Gray explains: "No discussion upon matters connected with Shakespeare's marriage seems to be complete without a reference to the probability that, in accordance with the custom of the time, he entered into a contract with Anne Hathaway a few months before the date of the licence."⁹¹

As Baldwin argues on this question, Shakespeare may have drawn his own norm for judgment on these matters from Erasmus: "In the case of Shakespeare, it would probably be safer to accept the judgment of Erasmus, "Levius igitur peccatum est." If they had been betrothed, they had not offended greatly."⁹²

It seems safe to conclude that in the popular mind to consummate a spousal before solemnization was a less serious sin. This seems to be borne out by rather widespread custom. In the legal and clerical mind, however, this was not the case, as we have seen. We shall find that Shakespeare the playwright is aware of both law and popular opinion and makes use of them both.

William Mader in his book called Courtship in Shakespeare observes that Shakespeare never slights the requirement that all marriages, eventually at least, be solemnized in church.

The interesting fact is that in Shakespeare's plays either form of spousal is invariably followed by a wedding as the twentieth-century audience understands it. The de futuro spousal theoretically could be broken, the de praesenti was binding in itself. But Shakespeare, apparently more conservative than legally necessary, always includes the church rites — or a pagan approximation of them — in the fifth act of the play if not before.⁹³

⁹¹Joseph Gray, Shakespeare's Marriage (London, 1905), p. 5.

⁹²Baldwin, I, 740.

⁹³William G. Mader, Courtship in Shakespeare (New York, 1954), p. 167.

This, then, was the marriage law and custom, the professional and popular understanding of it in Shakespeare's time. We will turn our attention now to Measure for Measure and see how these laws and practices make the play morally acceptable and dramatically intelligible.

CHAPTER IV

MARRIAGE LAW AND CUSTOM IN MEASURE FOR MEASURE

The legal and historical researches set forth in the last chapter were undertaken with a view to clarifying the marriage relations and occurrences in Measure for Measure. The play, as we shall see, contains instances of clandestine spousals with no witnesses, clandestine spousals with witnesses, two instances of anticipation of solemnization, and an official command to solemnize in church a de praesenti marriage contract already consummated. There are also within the play comments of the characters which reflect the moral judgments of the times on these various situations and occurrences. The object of the present chapter will be to apply the legal and historical findings of the last chapter to Measure for Measure and see how they are verified in the play, how they clarify it, and how they obviate most of the misunderstanding which has arisen out of ignorance of these laws and customs.

Though the substitution of Mariana for Isabel poses the greatest difficulty and is the central problem, this incident is preceded by a questionable relationship between Claudio and Juliet which is parallel to and intimately connected with the other. For an adequate treatment, then, we will consider them both, taking them in the order in which they occur in the play and seeing how the laws and customs and morals of the time are involved in each.

In the second scene of the First Act we find Claudio arrested and being

led away to prison for violation of an old law against fornication which makes the offender subject to capital punishment. The law has been dormant for nineteen years and is now being enforced for the first time by the new deputy Angelo. It is important to note just what this law proscribes. It forbids out and out fornication, and it is for this that Claudio has been arrested. Mistress Overdone, telling Lucio of Claudio's arrest, says:

I am too sure of it; and it is
for getting Madam Julietta with child.

Measure for Measure I. ii. 73-74¹

A little later Lucio asks, "What's thy offence, Claudio? . . . Lechery?" And Claudio answers, "Call it so" (I. ii. 139, 142-43). In order to enforce the same law Angelo has ordered all the bawdy houses around the city torn down: "All houses in the suburbs of Vienna must be pluck'd down" (I. ii. 98-99). In the Second Act when Angelo speaks of Juliet he says to the Provost: "See you the fornicatresses be remov'd" (II. ii. 22). And later on when Isabel is trying to save Claudio's life Angelo explains to her the nature and seriousness of Claudio's crime in these words:

It were as good
To pardon him that hath from nature stolne
A man already made, as to remit
Their saucy sweetness that do coin heaven's image
In stamps that are forbid: 'tis all as easy
Falsely to take away a life true made,
As to put metal in restrained meannes
To make a false one

II. iv. 42-49

Finally, in the Fifth Act Isabel addresses herself to the Duke:

¹William Shakespeare, Measure for Measure, ed. Davis Harding, The Yale Shakespeare, 2nd ed. (New Haven, 1956). All citations from this text.

I am the sister of one Claudio,
 Condemn'd upon the act of fornication
 To lose his head, condemn'd by Angelo.

V. i. 69-71

On this evidence, then, Claudio was arrested and condemned for violating a law forbidding fornication.

What was the moral judgment of the times on this sort of fornication? That it was a serious offense according to the law of the city is attested by the fact that it carried the death penalty as a sanction. This may be taken to correspond in a general way with the law of the Church in which fornication is and always was a serious sin. Therefore R. W. Chambers is absolutely correct when he says: "It is a postulate of our story that Claudio has committed a capital offence. Angelo has not committed a crime in letting the law take its course upon Claudio; . . ."² Within Measure for Measure itself we find in the words of the characters the moral judgment of the times on what here appears to be simple fornication. Isabella, in begging mercy of Angelo for Claudio's life, says:

There is a vice that most I do abhor,
 And most desire should meet the blow of justice,
 For which I would not plead, but that I must;

II. ii. 29-31

When Angelo first refuses her request she says: "O just, but severe law" (II. ii. 41)! And a few lines later she says to Angelo: "Yes: I do think that you might pardon him, and neither heaven nor man grieve at the mercy" (II. ii. 49-50). She knows what justice may exact for this crime; she asks only for mercy.

After the disguised friar-Duke has heard of Claudio's arrest, he meets

²R. W. Chambers, p. 301.

Julietta and asks her, "Repent you, fair one, of the sin you carry" (II. iii. 19)? She admits that she does and a few lines later he asks, "So it seems your most offenceful act/was mutually committed?" (II. iii. 26) To the friar-Duke, then, this act which is simple fornication as far as he knows is a serious, "most offenceful" deed. It will be very important to remember this: in the mind of the friar-Duke, cohabitation not preceded by any spousals was judged a serious offense, as it also was by the "law" of Vienna, the law of the Church, Isabella, Shakespeare, and his audience.

But was the relation between Claudio and Julietta simple out and out fornication as it was judged by the characters cited above? We know that it was not, because Shakespeare has Claudio confide to Lucio alone that he and Julietta had made a secret spousal contract by mutual consent before their cohabitation.

Claudio: Thus stands it with me: upon a true contract
 I got possession of Julietta's bed.
 You know the lady; she is fast my wife,
 Save that we do the denunciation lack
 Of outward order. This we came not to,
 Only for propagation of a dower
 Remaining in the coffer of her friends
 From whom we thought it meet to hide our love
 Till time had made them for us. But it chanced
 The stealth of our most mutual entertainment
 With character too gross is writ on Juliet.
 I. ii. 148-58

This passage makes it clear that before their union Claudio and Juliet had made a spousal contract. The fact that Claudio refers to Juliet as his wife indicates that the spousal contract was of the de praesenti type.³

³Swinnburne, p. 14." ...as well the Sacred Scriptures, as the Civil and Ecclesiastical Laws, do usually give to Women betrothed only, or affianced, the Name and Title of Wife, because in truth the man and woman, thus perfectly as-

Professor Harding also agrees that "Claudio's contract was clearly de praesenti."⁴ The fact that "we do the denunciation lack of outward order" means that there were no banns of marriage, no witnesses and no publicity whatsoever. The lovers thought it meet to hide their love from their friends and it is clear from what was seen above that not even Claudio's sister Isabel knew anything about the contract. All this clearly indicates that the spousal contract between the lovers is a perfect instance of the clandestine spousal with no witnesses described in the previous chapter. According to the old canon law, as we have seen, by reason of this secret mutual consent to be man and wife, Claudio and Juliet had contracted a fully valid, though illicit, marriage. Their subsequent union, therefore, was in fact what has been described above as an anticipation of solemnization.

Therefore, it was because no one but Claudio and Juliet knew about their secret marriage contract that Claudio was arrested for simple fornication and was deemed guilty of this by Angelo, Isabella, Mistress Overdone, and the friar-Duke. When Claudio confides the fact of the secret contract to Lucio, he becomes the third and the only other character in the play who knows about the contract. (This is essential for the consistency of the play.)

It is important and significant to note that in the third scene of the Second Act Julietta does not tell the friar-Duke of the secret de praesenti contract. He, knowing Claudio was arrested for simple fornication, asks Juliet if she repents of her sin, her "most offenceful act." She replies to the purposely general question that she does repent of it, admitting that their anti-

sured, by words of present time, are Husband and Wife before God and his Church.

⁴ Harding, Measure for Measure, p. 114. Note on text I. ii. 150.

cipation of solemnization was also fornicatory, sinful, and a "most offenceful act," as shown above according to the strict letter of the law. If she had told him of the secret contract at this point, he might have to say to her that it is still a sin (which she knows and has assented to), in which case he could not consistently say to Mariana later that "'tis no sin" to bring you together with Angelo because of your de praesenti spousal. As long as Claudio and Juliet's deed appears to the friar-Duke as simple fornication with no contract, he can consistently judge this a "most offenceful act" and later say cohabitation after a public de praesenti spousal contract is no sin. But more of this later.

It might be objected that the remarks of Escalus and the Provost at this point are an indication of a lenient popular judgment on fornication. If this is so, their arguments are characterized by the ignorance and fallacies that often accompany popular opinion. Escalus says "some are condemned for a fault alone" (II. i. 40). The Provost exclaims:

He hath but as offended in a dream.
All sects, all ages smack of this vice — and he
To die for't!

II. ii. 4-6

And a little later the Provost describes Claudio as

a young man
More fit to do another such offence,
Than die for this.

II. iii. 13-15

What Escalus says may be true in general, but it is not true in this case because according to the law as given in the play and accepted by the other characters Claudio's offense is not a mere fault. That Claudio has offended as in a dream is obviously false, for Claudio himself admits "The stealth of our most mutual entertainment/With character too gross is writ on Juliet" (I. ii.

157-58). That "All sects, all ages smack of this vice" may be true, but it does not lessen the vice. All these arguments can better be construed as arguing for mercy in the application of the law, rather than against the justice of the law as given.

If we admit with R. W. Chambers that "Angelo has not committed a crime in letting the law take its course upon Claudio,"⁵ where is Angelo at fault at this point? Briefly, his judgment is too hasty (II. ii. 9-11 and V. i. 412 and 416-17); he does not inquire and discover that Claudio and Juliet were validly married; he does not take into account that the law has been in disuse for many years and has been generally violated and that Claudio violated it while it was dormant; and lastly, he has no sympathy or pity for human weakness. In justice Claudio is guilty, but a strong case can be made out for mercy here. Shakespeare indicates what course a more humane character would take in enforcing the law. Escalus says: "If my brother [Angelo] wrought by my pity, it should not be so with him [Claudio]" (III. i. 489).

Keeping in mind then that Claudio was condemned for the generally recognized "most offenceful act" of simple fornication but had actually consummated a secret de praesenti spousal contract, let us now consider the substitution problem.

ANGELO AND MARIANA

As we indicated in the first chapter, the substitution of Mariana for Isabella in Angelo's bed was Shakespeare's solution to the central dilemma of

⁵R. W. Chambers, p. 301.

the plot; it saved both Isabella's chastity and Claudio's life. And yet to many critics of the play, it was no solution; it was rather a scandal, for they judged it to be just as reprehensible for Mariana to meet Angelo as for Isabella. In 1931 W. W. Lawrence defended Shakespeare's solution by pointing out that the fact that Mariana and Angelo had been affianced or betrothed five years previously was the element that made all the difference; according to Elizabethan spousals they were man and wife with full marital rights.⁶

The fact that Mariana and Angelo were betrothed is significant, but as demonstrated in the last chapter, they did not have marital rights and the fact of the spousal does not wholly solve the problem. Let us examine it more closely.

The hastily condemned Claudio awaits death in prison and Angelo has made the proposition to Isabella to exchange her chastity for her brother's life. The pure Isabella has no choice. After she has decided she cannot save her brother, the friar-Duke, knowing the whole situation, approaches her with a remedy.

Duke: . . . The assault that Angelo hath made to you, fortune hath convey'd to my understanding; How will you do to consent this substitute [Angelo], and to save your brother?

Isa.: I am now going to resolve him. I had rather my brother die by the law than my son should be unlawfully born

Duke: . . . [F]asten your ear on my advisings: to the love I have in doing good a remedy presents itself. I do make myself believe that you may most uprighteously do a poor wronged lady a merited benefit, redeem your brother from the angry law, do no stain to your own gracious person, and much please the absent Duke, if peradventure he shall ever return to have hearing of this business.

III. 1. 185-205

⁶Lawrence, p. 95.

The remedy the friar-Duke proposes for Isabella's dilemma involves a certain Marianna.

Duke: She should this Angelo have married, was affianced to her by oath, and the nuptial appointed: between which time of the contract and the limit of the solemnity, her brother Frederick was wrack'd at sea, having in that perished vessel the dowry of his sister. But mark how heavily this befell to the poor gentlewoman: there she lost a noble and renowned brother, in his love toward her ever most kind and natural; with him the portion and sinew of her fortune, her marriage dowry; with both, her combinate husband, this well-seeming Angelo.

III. 1. 214-24

According to the laws and customs cited in the last chapter, what the friar-Duke refers to here is without a doubt a public de praesenti spousal contract. The description is perfect in every detail. Three other passages later in the play referring to the same contract provide even more details. When the friar-Duke proposes the substitution to Mariana in the Fourth Act, he says to her:

Duke: . . . gentle daughter, fear you not at all.
He is your husband on a pre-contract:

IV. 1. 65-66

And in the Fifth Act Angelo says to the veiled Mariana, "Let's see thy face."

Mar.: My husband bids me. Now I will unmask.
(Unveiling.)

This is that face, thou cruel Angelo,
Which once thou swor'st was worth the looking on.
This is the hand which, with a vow'd contract,
Was fast belock'd in thine.

V. 1. 205-10

A little later in the same act the Duke summons Mariana and asks Angelo:

Duke: Say, wast thou ere contracted to this women?

Ang.: I was, my lord.

Duke: Go take her hence, and marry her instantly.
Do you the office, Friar -- which consummate,
Return him here again.

V. 1. 378-81

All the evidence indicates that the pre-contract between Angelo and Mariana was of the de praesenti type, made with witnesses but not in front of the church. The word "affianced" is used by Shakespeare and by Swinburne in a technical sense to refer to a couple contracted by words of the present time who had not yet had their union solemnized before the church. Swinburne pointed out that by reason of a pre-contract in words of the present time, the laws usually gave the couple the title of husband and wife.⁷ This is exactly how Angelo and Mariana are referred to each other in the passages above. Because their mutual consent was sealed "by oath" and was a "vow'd contract" and also because the Duke and others knew about it, the spousal between the two was clearly public, made with witnesses, and in this respect it was unlike that of Claudio and Juliet, which was made in secret.

Angelo and Mariana had, therefore, contracted a valid though illicit marriage, were known as husband and wife, but were not strictly "married." When the Duke tells Isabella, "She [Mariana] should this Angelo have married" (III. i. 214), and when in the last act he orders Angelo "Go take her hence, and marry her instantly" (V. i. 380), he is using the word "marry" in a technical sense referring to the nuptial celebration or solemnization at the church. Professor Harding says that "Shakespeare never used the word 'marry' loosely. There is no instance in his works when the term is employed to describe a betrothal contract. For Shakespeare, a couple was not "married" until the nuptial

⁷See note, p. 58.

ceremony had been concluded."⁸

So for Angelo and Mariana "the nuptial" was "appointed: between which time of the contract and the limit of the solemnity, her brother Frederick was wrack'd at sea" (III. 1. 215-17), and with the dowry gone, Angelo deserted.

Isa.: Can this be so? Did Angelo so leave her?

Duke: Left her in her tears, and dried not one of them
with his comfort: swallowed his vows whole, pretending
in her discoveries of dishonour:

III. 1. 225-28

Did this desertion dissolve the contract between Angelo and Mariana? The law cited in the last chapter clearly states that though a de futuro spousal could be dissolved at will by either party, a de praesenti contract, if unconsummated, could only be dissolved by the power of ecclesiastical authority for two reasons: either in favor of religious profession, or because one of the parties had committed adultery. Angelo had no intentions of entering religion, so it is for this reason that he pretended in Mariana "discoveries of dishonour." Shakespeare's familiarity with the law and his delicate handling of it show up with amazing brilliance as he deals with a fine point like this.

Thus despite Angelo's "pretending," his de praesenti spousal contract with Mariana was still good and binding; they had contracted a valid marriage and were husband and wife.

It is on these grounds, then, that the friar-Duke proposes to Isabella that Mariana take her place at the midnight meeting with Angelo.

⁸Harding, "Elizabethan Betrothals and Measure for Measure," p. 153.

Duke: [W]e shall advise this wronged maid to stand up your appointment, go in your place. If the encounter acknowledge itself hereafter, it may compel him to her recompense; and here, by this is your brother saved, your honor untainted, the poor Mariana advantaged, and the corrupt Deputy sealed.

III. i. 250-57

Mariana will be "advantaged" because once a de praesenti spousal has been consummated, it becomes absolutely indissoluble and cannot be loosed by any power on earth, not even for the two reasons cited above. In short, the substitution would trap Angelo for Mariana.

The "corrupt Deputy" would be "sealed" because as far as he knows he would be carrying out with Isabella the very deed for which he condemned Claudio to death — simple fornication with no pre-contract. If the deceit should succeed, Angelo could be accused of carrying out his evil intention. Thus when Isabella tells Claudio of Angelo's evil proposition, he wonders, "Has he affections in him,/That thus can make him bite the law by th' nose, When he would force it" (III. i. 109-11). And in the same way the friar-Duke tells the Provost in Act Four, "Claudio, whom here you have warrant to execute, is no greater forfeit to the law than Angelo who hath sentenc'd him" (IV. ii. 163-65).

Without the least hesitation or scruple Isabella agrees to the friar-Duke's substitution plan and sets out upon the execution of it. According to a legal appraisal of the deed, what the Duke is proposing for the meeting between Angelo and Mariana is the consummation of a de praesenti spousal before the nuptial celebration in front of the church; or in other words, what was referred to in the last chapter as anticipation of solemnization.

Now when Isabella returns from agreeing to meet Angelo in the garden at midnight, she presents the substitution plot to Mariana and then reports:

Isa.: She'll take the enterprise upon her, Father,
If you advise it.

Duke: It is not my consent,
But my entreaty too.

Duke to Mariana :
Hör, gentle daughter, fear you not at all.
He is your husband on a pre-contract.
To bring you thus together, 'tis no sin,
Sith that the justice of your title to him
Doth flourish the deceit. Come, let us go:
IV. i. 60-69

"To bring you thus together, 'tis no sin." Here is the great problem.

How and on what grounds can the friar-Duke say that the proposed anticipation of solemnization is no sin? Let us review the various judgments on this deed that were current in England at the time the play was written.

The legal judgment of church, bench and bar as set forth in the last chapter was unanimous in deeming the anticipation of solemnization a serious sin. It constituted what Lanfranc centuries before had called a fornicatory marriage and this was a serious sin.

The popular judgment of the common people, however, was something different from this. They would certainly consider simple fornication, as was the case to all appearances with Claudie and Juliet, a serious sin. But when cohabitation was preceded by public spousals, the generality of the people apparently considered it a less serious sin.

This opinion most likely arose out of a number of factors including those mentioned at the end of the last chapter. 1) One can easily understand how people might fail to distinguish between the validity and the liceity of marriage made by de praesenti spousal contract. The church would always uphold the validity of such a contract. 2) Erasmus's Colloquia were in general use

in the schools and they taught that if betrothal preceded intercourse, "Levius igitur peccatum est," — the sin was less serious. 3) By Shakespeare's time the prohibition of the study of canon law, then over eighty years standing, would certainly have dulled the popular awareness of the letter of the law. 4) The intention of marrying later on in church plus the ease of regularization might have led one to believe that anticipation was not so serious. And 5) The fact that this anticipation of solemnization was done so frequently, would probably spread the notion that it was not such a serious sin.

It seems clear that this popular judgment was the actual judgment of the Duke. His words to Mariana in the Fifth Act prove that he knew there was something wrong with the substitution as carried out. Mariana has just returned from being married to Angelo in front of the church and Angelo has just been condemned to death:

Duke: Consenting to the safeguard of your honor,
I thought your marriage fit. Else imputation,
For that he knew you, might reproach your life
And choke your good to come.

V. i. 421-24

If the sin of intercourse after spousals alone and before solemnization in church was regarded as "highly venial" as Harding says it was,⁹ it could hardly have impaired Mariana's honor and reproached her life and "choked her good to come." Rather than "highly venial" the Duke and the people in the audience must have considered the sin serious, but a less serious sin. "Levius igitur peccatum est;" less serious than fornication with no spousals at all, and a sin

⁹Ibid., p. 157.

rather easily rectified by solemnization in church as the Duke orders Angelo and Mariana to do.

The only difficulty remaining is how to justify this interpretation with the facts: first, that the Duke earlier tells Mariana "To bring you thus together, 'tis no sin"; and second, that the saintly Isabella does not even blink an eyelash at the substitution proposal, seeing that Angelo and Mariana were affianced. Professor Harding admits that the Duke in saying this "is stretching a point."¹⁰ He certainly is, but let us look at the arguments by which he persuades himself and Isabella that the substitution will be no sin. Taken by itself, he would probably concede that it was a sin of some magnitude as he implies above, but in the present context he tells Isabella:

. . . to the love I have in doing good a remedy presents itself. I do make myself believe that you may most up-righteously do a poor wronged lady a merited benefit, redeem your brother from the angry law, do no stain to your own gracious person, and much please the absent Duke, if peradventure he shall ever return to have hearing of this business.

III. 1. 199-205

What sin there may have been in the anticipation of solemnization in the Duke's mind is balanced against four more or less weighty benefits or advantages. A few lines after these the Duke again reviews the advantages of the plan for Isabella:

If the encounter acknowledge itself hereafter, it may compel him [Angelo] to her [Mariana's] recompense; and here, by this is your brother saved, your honor untainted, the poor Mariana advantaged, and the corrupt deputy scaled. . . . If you think well to carry this, as you may, the doubleness of the benefit defends the

¹⁰Ibid., p. 158.

deceit from reproof. What think you of it?

Isa.: The image of it gives me content already, and I trust
it will grow to a most prosperous perfection.

III. 1. 252-62

"The doubleness of the benefit defends the deceit from reproof." Either the Duke simply ignores the "less serious sin" here, or he thinks that it is balanced out by the advantages he mentions. I believe that the advantages are mentioned, and mentioned twice, by the Duke precisely in order to "balance out" or "justify" what he is aware of as a sin; he proves this awareness in the Fifth Act — "Else imputation that he knew you, might reproach your life / And choke your good to come" (V. 1. 422-24). What the Duke is offering here to assuage his own conscience and Isabella's and the audience's is the argument that the end justifies the means, which of course, is morally reprehensible. The many advantages that will accrue plus the pre-contract "justify" the sin. A few lines beyond the passage cited above, the Duke "justifies" the substitution plan for Mariana on the basis of her pre-contract, stressing the fact that she was already validly married to Angelo. This fact that a valid marriage existed after a de praesenti contract, as we noted above, was precisely what caused the anticipation of solemnization to be popularly considered a less serious sin, or perhaps not considered one at all.

Duke: He is your husband on a pre-contract.
To bring you thus together, 'tis no sin,
Sith that the justice of your title to him
Doth flourish the deceit.

IV. 1. 66-69

It is true, of course, that neither the four-fold advantage nor the pre-contract can justify the sin involved in the substitution trick. And if the reasons which the Duke gives to "justify" the plan do not satisfy the critic

who judges these actions on a moral basis alone, the critic must remember to keep in mind that he is dealing here not with a case of moral theology, but with a dramatic action. And the drama has certain exigencies of its own which must be provided for.

As Francis Fergusson has pointed out, Measure for Measure is developed from the old story and play of Promos and Cassandra to which Shakespeare added the traditional bed-trick,¹¹ — "by this is your brother saved, your honor untainted, the poor Mariana Advantaged, and the corrupt deputy scaled" (III. 1. 254-56). The story as given demands that someone go and meet Angelo in the garden, otherwise the dramatic action cannot go forward as intended. To fulfil this demand, Shakespeare, through the Duke, introduces Mariana and "justifies" her rendezvous with Angelo as best he can. To do this, Shakespeare utilizes the popular judgment that union after a pre-contract is a "less serious sin" together with the Duke's plausible, though definitely erroneous use of the principle that the end justifies the means. Shakespeare meets the demands of the drama by the sophistry of the Duke.

As far as Isabella is concerned, the Duke anticipates her difficulty with the substitution and tells her about the pre-contract and the four advantages of the plan by which he "persuaded" himself that it would be all right. We are meant to believe that Isabella accepts this proposal and proceeds to carry it out in good faith — a "friar" has recommended the plan. Shakespeare simply has Isabella take the "friar's" word for it that things are "all right". Thus she

¹¹ Francis Fergusson, The Human Image in Dramatic Literature, Doubleday Anchor ed. (Garden City, New York, 1957), p. 130.

proceeds in good faith and is not to be considered as lowering her standards.

To distinguish, as we did earlier in this chapter, between who knows what in the play reveals a consistency in the judgments and conduct of the characters and makes the judgment scene in the Fifth Act much more intelligible. Thus Isabella, who has not heard of the pre-contract between Claudio and Juliet, is consistent in describing their union as "a vice that most I do abhor, / And most desire should meet the blow of justice" (II. ii. 29-30). And a little later, when she learns of the pre-contract between Angelo and Mariana, she can consistently say, "The image of it [their union] gives me content already" (III. i. 261).¹² So also Angelo, since he hastily condemned Claudio to death for simple fornication, not knowing of the pre-contract, can be consistently condemned to death by the Duke for carrying out, as far as he knew, his intentions of simple fornication with Isabella. And the Duke, not knowing in the First Act of the pre-contract between Claudio and Juliet, can say to her "Repent you, fair one, of the sin you carry?" (II. iii. 19), the result of your "most offenceful act" (II. iii. 26); and later, knowing of the pre-contract between Angelo and Mariana, he can consistently, though not quite accurately, say to Mariana, "To bring you thus together, 'tis no sin" (IV. i. 67).

Finally in the Fifth Act, Angelo is condemned 'measure for measure' in justice for his condemnation of Claudio. But when it turns out that Claudio is still alive, the Duke forgives Claudio (perhaps partly because of his pre-

¹²As indicated above, the four-fold advantage also contributes to Isabella's content.

contract and full intention to marry Juliet) and then 'measure for measure' in mercy forgives Angelo too.

CHAPTER V

CONCLUSION

The application of the legal and historical investigations of Chapter Three to Measure for Measure in the previous chapter not only served to solve some of the chief problems of the play and elucidate many of the intricacies of the plot, but it revealed in a remarkable way Shakespeare's amazing fidelity to the finest points of the marriage laws and customs of his day. This is true to such a degree that Measure for Measure emerges as a perfect historical reflection of the details of the old canon law of marriage, the serious shortcomings and weaknesses of that law, and the abuses to which it was subject. With its secret spousals, desertions after spousals and anticipation of solemnization, Measure for Measure can stand as a perfect example of why the Catholic Church in 1563 and the English Parliament in 1753 abolished the old legislation and thereafter required publicity, the presence of a priest and two witnesses, for the validity of marriage.

From the intricacy and complexity of the laws and customs reviewed in the preceding chapters, one would be inclined to judge that though the play would be dramatically intelligible to the people of Shakespeare's audience because they were perfectly familiar with these marriage and betrothal practices, it would be practically unintelligible to a modern audience because they lack this familiarity. Surely the complexity of these factors in the play has thoroughly confused a great number of critics. And yet after seeing Peter Brook's produc-

tion of the play at Stratford in 1950, Robert Smith reported in the Shakespeare Quarterly that "Brook's production demonstrates again that many of the so-called 'problems' which have troubled the literary and dramatic critics disappear on the stage. What seemed so complex and paradoxical in plot and character emerges as natural and sun-clear."¹ This is encouraging, and it would have been better if Smith had stopped here because his own efforts to unravel some of the "so-called 'problems'" in the same article are anything but "sun-clear." Charles J. Sisson also testified on behalf of the dramatic stage impression of the play when he wrote that "Measure for Measure with its superb dramatic poetry, diversified by comic force, and its absorbing theme, is one of Shakespeare's finest acting plays."²

Measure for Measure, a triumph of chastity worked out with consummate skill, is a masterpiece of characteristically Christian literature. "Far from being rotten, the play is sound to the core, and profoundly Christian in spirit. Isabella is one of Shakespeare's greatest creations, hardly to be excelled among his characters of women even by Cleopatra."³

It may be argued that the complex construction of Measure for Measure is a drawback to its dramatic effectiveness. We can only refer to the favorable impression received and reported by Robert Smith who saw the play on the stage.

¹Robert Smith, "Interpretations of Measure for Measure," Shakespeare Quarterly (1950), I, 209.

²Charles J. Sisson, The Mythical Sorrows of Shakespeare (Oxford, England, 1934), p. 59.

³Ibid.

But this question of complex construction is interesting in itself. John Massfield remarked: "Three important plays follow this: they are plays of thought, not vision. They are the difficult plays: Troilus and Cressida, Measure for Measure, and Othello. Troilus is the bitterest and strangest, and the other two the most skillful of all the plays."⁴ G. Wilson Knight praised Measure for Measure in this way: "But, in truth, no play of Shakespeare shows more thoughtful care, more deliberate purpose, more consummate skill in structural technique, and, finally, more penetrating ethical and psychological insight."⁵

Finally, there is the significant interplay of justice and mercy in Measure for Measure. Our distinctions at the end of Chapter Four show how the Fifth Act of the play begins with the Old Law, the justice interpretation of "measure for measure" — the lex talionis, an eye for an eye, a tooth for a tooth, and an Angelo for a Claudio. The Fifth Act then ends with the New Law, the merciful interpretation of "measure for measure" — forgiveness for all who can be forgiven. Measure for Measure is fundamentally a play of Christian forgiveness. Because they missed this point, Coleridge and A. C. Swinburne were badly baffled by the play. Their sense of justice was offended. Turning affected phrases right and left, Swinburne hungers and thirsts after a tooth for a tooth:

The strong and radical objection distinctly brought forward against this play, and strenuously supported by the wisest and warmest devotees among all the worshipers of Shakespeare, is not exactly this,

⁴ John Massfield, Shakespeare and the Spiritual Life (Oxford, England, 1924), p. 22.

⁵G. Wilson Knight, p. 96.

that the Puritan Angelo is exposed: it is that the Puritan Angelo is unpunished. In the very words of Coleridge, it is that by his pardon and his marriage 'the strong indignant claim of justice' is 'baffled.' The expression is absolutely correct and apt: justice is not merely evaded or ignored or even defied: she is both in the older and the newer sense of the word directly and deliberately baffled: buffeted, outraged, insulted, struck in the face. We are left hungry and thirsty after having been made to thirst and hunger for some wholesome single grain at least of righteous and too long retarded retribution: we are tricked out of our dole, defeated of our due, lured and led on to look for some equitable and satisfying upshot, defrauded and derided and sent empty away.⁶

But let us not be too hard on these hungry and thirsty people. A number of critics since then have set the play right in the perspective of the New Law of merciful "measure for measure." G. Wilson Knight, Roy Battenhouse, and Davis Harding put the theme of the play into the context which Shakespeare intended by his use of a scriptural title.

Judge not, that you may not be judged. For with what judgment you judge, you shall be judged: and with what measure you mete, it shall be measured to you again. And why seest thou the mote that is in thy brother's eye; and seest not the beam that is in thy own eye? Or how sayest thou to thy brother: Let me cast the mote out of thy eye; and behold a beam is in thy own eye? Thou hypocrite, cast out first the beam out of thy own eye, and then shalt thou see to cast out the mote out of thy brother's eye.

Matt. VII. 1-5

This text refers most appropriately to the conduct of Angelo. The modern critics just mentioned above have pointed this out. But there is another "measure for measure" text in Saint Luke which I believe Shakespeare also had in mind with special reference to the merciful forgiveness of the Duke in the last act:

Be ye therefore merciful, as your Father also is merciful. Judge not, and you shall not be judged. Condemn not, and you shall not be condemned. Forgive, and you shall be forgiven.

⁶ Algernon C. Swinburne, A Study of Shakespeare (New York, 1880), p. 203.

Give, and it shall be given to you: good measure and pressed down and shaken together and running over shall they give into your bosom. For with the same measure that you shall mete withal, it shall be measured to you again.

Luke VI. 36-38

APPENDIX I

HOWE MATRYMONY IS MADE WITH THE CIRCUMSTAUCE AND SOLEMPTYTES AS APPERTAINETH THERTO

As touchynge the second partye / it is to be knowen that man and woman dothe entre this holy ordre and sacramente of matrymony by expresse and free consente of bothe parties / that is to say: when both the man and the woman dothe consente bothe in one tyme to be husbonde and wyfe / and that consente doe shewe eyther to other by expresse wordes of the tyme presente / as by these wordes or other lyke / I take the to my wyfe / or I frome this tyme forwards wyll haue the to my wyfe. And yf the woman also incontynently expresse the same or other lyke wordes. then there is contracte matrymony betwyxte them But and they vse wordes of the tyme to come As yf the man saye thus / I shall take the to my wyfe. And the woman saye / I shall take the to my husbonde or other lyke wordes of tyme to come; then it is noo matrymony. But promyse to make matrymony This consent whiche maketh matrymony ought to be in bothe theyr soules by true loue so yt ether shuld consent to loue other aboue all ye creaturs of the worlde

. . . . Moreover this consent which doth make matrymony ought to be expressed & shewed in open and in honest places afore & in the p̄sence of honest & lauffull wytnesses called specially therefore. ii. at ye leest / for & it be otherwyse . . . yt is called matrymony clādestinat whiche for many causes is forboden by the lawe notwithstanding that matrymony is valeable and holdeth afore god.

And when matrymony is called matrymony thus lauffully made / yet the man maye not possesse the woman as his wyfe / nor the woman the man as her husbonde . . . afore such tyme as that matrymony be approued and solemptysed by oure mother holy chyrche / and yf they do in dede they synne deedly. / And to that solemptyte are many thynges requyred by the lawe. Fyrste is that the banes must be asked iii sondayes or other festyuall dayes And euery man and woman whiche dothe knowe any impedymente or haue any lykely coniecture of any impedymente are bounde for to come and at the leest denounce and shewe the same to the curate The curate also him selfe is bounden for to make dyligente serche and inquisycyon for to knowe yf any impedymente be or any lykelyhode of impedymente to let the matrymony

More ouer it is to understonde that he sayde solēnycation of matrimony which is required to be made in the face of the chyrche may not be made euery tyme of the yere

And this solempnyacyon oughte to be made in the face of the chyrche in the clere daye after the sonne be rysen and with honoure and reuerence.¹

¹Willain Harrington, Comendacions of matrimony, 1528 ed., f. Aiii ff. Cited from Chilton Powell, English Domestic Relations, 1487-1653 (New York, 1917), Appendix C, pp. 232-33.

APPENDIX II

REPORT OF AN IRREGULAR MARRIAGE

AND ITS ABUSE

The suit of William Holder of Fulbook against Alice Shaw of Hatton for the completion of an alleged contract of marriage was heard in the Consistory Court at Worcester on various dates between October, 1585 and June, 1586. (Deposition Book No. 3 and Act Book No. 4, Worcester Diocesan Registry). A definitive sentence was read in the court in February, 1586-7, and the last reference in the Act Book, dated June 16th, states that the defendant was then contumacious after excommunication for forty days. In the deposition given below, dated December 7th, 1585, Thomas Graunt of Wall house in the county of Worcester, Gentleman, described the circumstances under which the alleged contract was made.

"Upon the Sunday next before the feast of St. Mathewe last past this deponent came unto the house of one Thomas Bree of the parish of Hatton, father in lawe to the said Alice Shawe, of intent to have had some conference as well with the said Bree as with the said Alice, concerninge the concluding of a marriage between the said parties articulate, and fynding the said Thomas Bree from home, and the said Alice conformable and willing to acknowledg herself to be the wief of the sayd Wm. Holder, this deponent walking forth with the said Alice Shaw in the backside of the said Thomas Bree his said house. And upon examination of both parties, finding them both willing to be contracted, this deponent said, Alice, are you contented to be this man his wief (meaning the said Holder) and she sayd I am, and agayne saying unto her the said Alice, are you content to geve this man your faith and trothe, and she answered I am, and also asking her whether she was content to forsake all other men and to betake her self unto him onely as unto her husband, and she did make answer with theis wordes, viz., I am content, whereupon this deponent replied and sayd, Alice, then this it is, you do here willingly acknowledge this man to be your husband and your self to be his wief, and she answered I doe, and said againe unto her, you do also confesse that you have hereupon given him your faith and your trothe, and she made answer I doe, you do likewise confesse (said this jurat unto her) that you are content to forsake all other men and betake yourself unto him onely, as to your husband, and she answered, I do confess it. Then this deponent said unto her, in pledge and token thereof geve him your hand, which she did, and that then and there the said Holder, mutatis mutandis, did contract and give his faith and his trothe unto the said Alice, as her husband, as in effect she the said Alice had done to him as his wief and so leused handes

and kissed together in the presence of this deponent That this deponent after this contract soe passed between the said parties, did send them the said Holder and Alice into her father in lawes said house, there to acknowledge and confesse the said contract so had and made between them as is before said, before one Raphe Willis and John Maydes, who were then in the said house, and before whom this deponent thinketh the said contract was acknowledged, but he further saith, that he this deponent coming afterwards into the said house amonges them, said amongst other things, unto the said Alice, I hope you do remember what you have done, and she said, yea very well, then said this deponent, you have acknowledged your self to be this man's wief, I have so sir said she, and this deponent said againe, yea, you have not only contented your self to be his wief but also you do here acknowledge before all theis, that you are his wieff, and she said I doe, and doe and will forsake all other men for him and thereupon the said William Holder and she the said Alice kissed together in the presence of this deponent and the afore-named Raphe Willis and John Maides."

Randolph Willis and John Maydes corroborated portions of Graunt's statement, but the relatives of neither Holder nor Shaw appear to have been called upon for evidence. The words "husband"² ("He is your husband on a pre-contract" Measure for Measure, iv. 1.) and "wife" indicate the nature of the contract to which the parties were binding themselves, it was a contract "by words of the present time," — in fact a legal marriage.¹

¹ Joseph W. Gray, Shakespeare's Marriage (London, 1905), Appendix IV, "Marriage Contracts or Espousals", pp. 190-91.

APPENDIX III

"THE FORM OF SOLEMNIZATION OF MATRIMONY"

FROM THE LITURGICAL SERVICES

OF QUEEN ELIZABETH,

1559

First the banns must be asked three several sundays or holy-days, in the time of service, the people being present after the accustomed manner.

And if the persons that would be married dwell in divers parishes, the banns must be asked in both parishes, and the curate of the one parish shall not solemnize Matrimony betwixt them, without a certificate of the banns being thrice asked from the curate of the other parish. At the day appointed for solemnization of Matrimony, the persons to be married shall come into the body of the church with their friends and neighbours. And there the Priest shall thus say.

Dearly beloved friends, we are gathered together here in the sight of God, and in the face of his congregation, to join together this man and this woman in holy matrimony, which is an honourable estate, instituted of God in paradise, in the time of man's innocency: signifying unto us the mystical union, that is betwixt Christ and his church: which holy estate Christ adorned and beautified with his presence and first miracle that he wrought in Cana of Galilee, and is commended of Saint Paul to be honourable among all men, and therefore is not to be enterprised, nor taken in hand unadvisedly, lightly or wantonly, to satisfy men's carnal lusts and appetites, like brute beasts that have no understanding; but reverently, discreetly, advisedly, soberly, and in the fear of God; duly considering the causes for the which matrimony was ordained. One was, the procreation of children, to be brought up in the fear and nurture of the Lord, and praise of God. Secondly, it was ordained for a remedy against sin, and to avoid fornication, that such persons as have not the gift of continency, might marry, and keep themselves undefiled members of Christ's body. Thirdly, for the mutual society, help and comfort, that the one ought to have of the other, both in prosperity and adversity: into the which holy estate these two persons present come now to be joined. Therefore if any man can shew any just cause, why they may not lawfully be joined together, let him now speak: or else hereafter for ever hold his peace.

And also speaking to the persons that shall be married, he shall say.

I require and charge you (as you will answer at the dreadful day of judgment, when the secrets of all hearts shall be disclosed) that if either of you do know any impediment why ye may not be lawfully joined together in Matrimony, that ye confess it. For be ye well assured, that so many as be coupled together otherwise than God's word doth allow, are not joined together by God, neither is their Matrimony lawful.

. . . If no impediment be alleged, then shall the Curate say unto the man,

N. Wilt thou have this woman to thy wedded wife, to live together after God's ordinance in the holy estate of Matrimony? Wilt thou love her, comfort her, honour and keep her, in sickness, and in health? And forsaking all other, keep thee only to her, so long as you both shall live?

The man shall answer,

I Will.

Then shall the Priest (1578, the Minister) say to the woman,

N. Wilt thou have this man to thy wedded husband, to live together after God's ordinance in the holy estate of Matrimony? Wilt thou obey him and serve him, love, honour, and keep him, in sickness and in health, and forsaking all other, keep thee only unto him, so long as you both shall live?

The woman shall answer,

I will.

Then shall the Minister say,

Who giveth this woman to be married unto this man?

And the Minister receiving the woman at her father or friend's hands, shall cause the man to take the woman by the right hand, and so either to give their troth to other. The man first saying.

I. N. take thee. N. to my wedded wife, to have and to hold from this day forward, for better, for worse, for richer, for poorer, in sickness, and in health, to love and to cherish, till death us depart, according to God's holy ordinance: and thereto I plight thee my troth.

Then shall they loose their hands, and the woman taking again the man by the right hand shall say.

I. N. take thee. N. to my wedded husband, to have and to hold from this

day forward, for better, for worse, for richer, for poorer, in sickness, and in health, to love, cherish, and to obey, till death us depart, according to God's holy ordinance: and thereto I give thee my troth.

Then shall they again loose their hands, and the man shall give unto the woman a ring, laying the same upon the book with the accustomed duty to the priest (the Minister) and Clerk. And the Priest (the Minister) taking the ring, shall deliver it unto the man, to put it upon the fourth finger of the woman's left hand. And the priest (the minister) shall say.

O Eternal God, creator and preserver of all mankind, giver of all spiritual grace, the author of everlasting life: Send thy blessing upon these thy servants, this man and this woman, whom we bless in thy name: that as Isaac and Rebecca lived faithfully together, so these persons may surely perform and keep the vow and covenant betwixt them made, whereof this ring given and received is a token and pledge, and may ever remain in a perfect love and peace together, and live according unto thy laws: through Jesus Christ our Lord. Amen.

Then shall the Priest (the Minister) join their right hands together, and say.

Those whom God hath joined together, let no man put asunder.¹

...

After this the Minister addresses the people and various other prayers and psalms are said.

¹Liturgical Services. Liturgies and Occasional Forms of Prayer Set Forth in the Reign of Queen Elizabeth, ed., William K. Clay, for the Parker Society; Parker Society Publications, (Cambridge, England, 1847), XXX, 217-219.

APPENDIX IV

THE DECREE "TAMETSI" OF

THE COUNCIL OF TRENT

1563

Tametsi dubitandum non est, clandestina matrimonia, libero contrahentium consensu facta, rate et vera esse matrimonia, quamdiu ecclesia ea irrita non fecit, et proinde jure damnandi sunt illi, ut eos sancta synodus anathemate damnat, qui ea vera ac rate esse negant, . . . Verum, quum sancta synodus animadvertat prohibitiones illas propter hominum inobedientiam jam non prodesse, et gravia peccata perpendat, quae ex eisdem clandestinis conjugiiis ortum habent, praesertim vero eorum, qui in statu damnationis permanent, dum priore uxore, cum qua clam contraxerant, relicta cum alia palam contrahunt, et cum ea in perpetuo adulterio vivunt, cui malo quum ab ecclesia, quae de occultis non iudicat, succurri non possit, nisi efficacius aliquod remedium adhibeatur, idcirco sacri Lateranensis concilii sub Innocentio III. celebrati vestigiis inhaerendo praecipit, ut in posterum, antequam matrimonium contrahatur, ter a proprio contrahentium parcho tribus continuis diebus festivis in ecclesia inter missarum solennia publice denunciatur, inter quos matrimonium sit contrahendum; quibus denunciationibus factis, si nullum legitimum opponatur impedimentum, ad celebrationem matrimonii in facie ecclesiae procedatur, ubi parochus, viro et muliere interrogatis, et eorum mutuo consensu intellecto, vel dicat: Ego vos in matrimonium coniungo in nomine Patris, et Filii et Spiritus sancti, vel aliis utatur verbis, juxta receptum uniuscuiusque provinciae ritum Qui aliter, quam praesente parcho, vel alio sacerdote de ipsius parochi seu ordinarii licentia, et duobus vel tribus testibus matrimonium contrahere attentabunt, eos sancta synodus ad sic contrahendum omnino inhabiles reddit, et huiusmodi contractus irritos et nullos esse decernit, prout eos praesenti decreto irritos facit et annullat.¹

¹Fridericus Schulte et Aemilius Richter, Canones et Decreta Concilii Tridentini (Lipsiae, 1853), Sessio XXIV, De Sacramento Matrimonii, pp. 256-58.

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APPROVAL SHEET

The thesis submitted by George A. Lane, S.J.,

has been read and approved by three members of the Department of English.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of Master of Arts.

May 22, 1961
Date

Joseph S. Melman, S.J.
Signature of Adviser